YOUSEF AL-GHOUL, ISAM MOHAMMAD ABDULHADI, WAIL RASHID AL-KHATIB, NABEEL NASSER AL-RIYAMI, ASHRAF HASSAM AL-YAZORI, AND MOHAMMAD ABUSHENDI, PETITIONERS, VS. COURT OF APPEALS AND ...

G.R. No. 126859. September 04, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners assail the decision[1] dated September 30, 1996, of the Court of Appeals, which affirmed the orders of the Regional Trial Court of Kalookan City, Branch 123, thereby dismissing petitioners' special civil action for certiorari.[2]

The facts leading to the present petition under Rule 65 are as follows:

On March 31, 1995, Judge Geronimo S. Mangay, presiding judge of the Regional Trial Court, National Capital Judicial Region, Branch 125, Kalookan City, issued search warrants 54-95[3] and 55-95[4] for the search and seizure of certain items in Apartment No. 2 at 154 Obiniana Compound, Deparo Road, Kalookan City.

On April 1, 1995, the police searched Apartment No. 8, in the same compound and found one (1) .45 caliber pistol. Found in Apartment No. 2 were:

> 2 M-16 rifles with 2 magazines and 20 live M-16 ammunitions
>
> 1 Bar of demolition charge
>
> 1 Caliber Pistol with no. 634 and other nos. were placed with magazine of Caliber .45 and 3 live 45 ammunitions
>
> 1 22 Caliber handgun with 5 live ammunitions in its cylinder
>
> 1 Box containing 40 pieces of .25 caliber ammunitions
>
> 2 pieces of fragmentation grenade
>
> 1 roll of detonating cord color yellow
>
> 2 big bags of ammonium nitrate suspected to be explosives substance
>
> 22 detonating cords with blasting caps
>
> ½ and ¼ pound of high explosives TNT
>
> 1 timer alarm clock
>
> 2 bags of suspected gun powder

2 small plastic bag of suspected explosive substance

1 small box of plastic bag of suspected dynamites

One weighing scale

Two (2) batteries 9 volts with blasting caps and detonating cord.[5]

The firearms, ammunitions, explosives and other incendiary devices seized at the apartments were acknowledged in the receipt signed by SPO2 Melanio de la Cruz.

Petitioners were charged before the Regional Trial Court of Kalookan City, Branch 123, in informations docketed as Criminal Cases Nos. C-48666-67, accusing them with illegal possession of firearms, ammunitions and explosives, pursuant to Presidential Decree No. 1866.[6] Thereafter, petitioners were arrested and detained.

Petitioners filed a motion for bail on May 24, 1995, the resolution of which was held in abeyance by the RTC pending the presentation of evidence from the prosecution to determine whether or not the evidence presented is strong.[7]

On February 7, 1996, at the hearing for bail, the RTC "admitted all exhibits being offered for whatever purpose that they maybe worth" after the prosecution had finished adducing its evidence despite the objection by the petitioners on the admissibility of said evidence.

On February 19, 1996, the RTC denied petitioners' motion for bail earlier filed, giving as reasons the following:

> To begin with, the accused are being charged of two criminal offenses and both offenses under Presidential Decree 1866, Sections 1 and 3 thereof prescribe the penalty of Reclusion Temporal in its maximum period to Reclusion Perpetua. Under Rule 114 of the Rules on Criminal Procedure as amended by Supreme Court Administrative Circular No. 12-94, particularly Section 7 thereof, no person charged with a capital offense or an offense punishable by reclusion perpetua or life imprisonment, when evidence of guilt is strong shall be admitted to bail regardless of the stage of the criminal prosecution....[8]

As petitioners' action before respondent appellate court also proved futile, petitioners filed the instant petition on the ground that it had acted with grave abuse of discretion tantamount to lack or in excess of jurisdiction. They present for our consideration the following issues:

- WHETHER OR NOT THE EVIDENCE OFFERED BY THE PROSECUTION ARE ADMISSIBLE;

- WHETHER OR NOT ACCUSED HAVE THE RIGHT TO BAIL.[9]

The issue on bail has been resolved in our resolution dated November 24, 1998, where this Court ruled:

> Consequent to the enactment of RA 8294, the penalty prescribed in Section 1 and 3 of P.D. 1866 for illegal possession of firearms, ammunitions and explosives under which petitioners were charged, has now been reduced to prision mayor in its minimum period and prision mayor in its maximum period to reclusion temporal, respectively. Evidently, petitioners are now entitled to bail as a matter of right prior to their conviction by the trial court pursuant to Section 4 of SC Administrative Circular No. 12-94 ...[10]
>
> x x x
>
> WHEREFORE, the petitioners' motion is hereby GRANTED. The Temporary Restraining Order issued by this Court in the Resolution of November 20, 1996 is hereby PARTIALLY LIFTED in so far as petitioners' pending motion for bail before the RTC of Kalookan City, Branch 123 is concerned. The trial court is hereby ordered to proceed with the hearing of the motion for bail and resolve the same with dispatch.[11]

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The issue that remains is whether the respondent court erred and gravely abused its discretion when it ruled that the search and seizure orders in question are valid and the objects seized admissible in evidence.

Petitioners contend that the search and seizure orders violated Sections 2 and 3 of the Bill of Rights[12] as well as Section 3 of Rule 126 of the Rules of Court on Criminal Procedure[13] because the place searched and articles seized were not described with particularity. They argue that the two-witness requirement under Section 10 of Rule 126[14] was ignored when only one witness signed the receipt for the properties seized during the search, and said witness was not presented at the trial. Petitioners also aver that the presumption of regularity of the implementation of the search warrant was rebutted by the defense during cross-examination of prosecution witnesses. According to petitioners, respondent court failed to appreciate the fact that the items seized were not turned over to the police evidence custodian as required under Section 18 of the Department of Justice Circular No. 61 dated September 21, 1993. Finally, they fault the lower court's finding that petitioners were in possession of the items allegedly confiscated from them.[15]

For the State, the Office of the Solicitor General avers that the search of Apartment 2 was legal, and the items seized therein are admissible in evidence. However, the OSG agrees with petitioners that the search warrants issued by the RTC, Branch 125, Kalookan City on March 31, 1995, namely search warrant 54-95[16] and search warrant 55-95,[17] specified the place to be searched, namely Apartment No. 2, 154 Obiniana Compound, Deparo Road, Kalookan City. There was no mention of Apartment No. 8. Thus, we find that the search conducted at Apartment No. 8 clearly violated Sections 2 and 3 (2) of the Bill of Rights, in relation to Section 3 of Rule 126 of the Rules of Court.

As held in PICOP v. Asuncion,[18] the place to be searched cannot be changed, enlarged nor amplified by the police. Policemen may not be restrained from pursuing their task with vigor, but in doing so, care must be taken that constitutional and legal safeguards are not disregarded. Exclusion of unlawfully seized evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. Hence, we are constrained to declare that the search made at Apartment No. 8 is illegal and the .45 caliber pistol taken thereat is inadmissible in evidence against petitioners.

Now, in contrast, the search conducted at Apartment No. 2 could not be similarly faulted. The search warrants in question specifically mentioned Apartment No. 2. The search was done in the presence of its occupants, herein petitioners,[19] in accordance with Section 7 of Rule 126, Revised Rules of Court.[20]

Petitioners allege lack of particularity in the description of objects to be seized pursuant to the warrants. Hence, they also question the seizure of the following articles from Apartment No. 2, namely:

> One M16 rifles, Colt AR-15 with 2 magazines and 20 rds ammo live
>
> One (1) bar demolition charge
>
> One (1) .45 caliber pistol numbers were defaced with magazine and with three (3) live .45 cal ammos
>
> One (1) .22 caliber handgun with live ammos in its cylinder
>
> One (1) box containing (40) forty pieces of .22 cal. live ammos (magnum)
>
> Two (2) pieces fragmentation grenade
>
> Two (2) magazines of M16 rifles with live ammos.[21]

To appreciate them fully, we quote the search warrants in question:

> Search Warrant 54-95

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It appearing to the satisfaction of the undersigned, after examining under oath P/Sr Insp Joel D. Pagdilao, Chief, DPIU, OADDI NPDC, Applicant and his witness SPO1 Cesar R. Rivera of District Police Intelligence Unit, Northern Police District Command with postal address c/o NPIU, NPDC, PNP, Langaray St., Kaunlaran Village, Kalookan City that a.k.a. AL, a.k.a. GHUL a.k.a. NADI, a.k.a. NABIL and several John Does of Apartment Nr. 2, Nr. 154 Obiniana Compound, Deparo Road, Kalookan City have in their possession and control the following:

1. One (1) 45 Caliber Pistol

You are hereby commanded to make an immediate search anytime of the DAY and NIGHT of the premises above-mentioned and forthwith, seize and take possession of the foregoing property, to wit:

1. One (1) .45 Caliber Pistol

and bring to this Court to be dealt with as the law may direct.[22]

Search Warrant 55-95

It appearing to the satisfaction of the undersigned after examining under oath P/Sr. Insp. Joel D. Pagdilao, Chief, DPIU, OADDI NPDC, Applicant and his witness SPO1 Cesar R. Rivera of District Police Intelligence Unit, Northern Police District Command with postal address c/o NPIU, NPDC, PNP, Langaray St., Kaunlaran Village, Kalookan City that a.k.a. AL, a.k.a. GHUL a.k.a. NADI, a.k.a. NABIL and several John Does of Apartment Nr. 2, Nr. 154 Obiniana Compound, Deparo Road, Kalookan City have in their possession and control the following:

- One (1) 5.56 M16 Rifle with corresponding ammunitions

- One (1) 9MM Pistol with corresponding ammunitions

- Three (3) boxes of explosives

- More or less ten (10) sticks of dymanites (sic)

- More or less thirty (30) pieces of blasting caps pieces of detonating cords

You are hereby commanded to make an immediate search anytime of the DAY or NIGHT of the premises above-mentioned and forthwith seize and take possession of the foregoing properties, to wit:

- One (1) 5.56 M16 Rifle with corresponding ammunitions

- One (1) 9MM Pistol with corresponding ammunitions

- Three (3) boxes of explosives

- More or less ten (10) sticks of dymanites (sic)

- More or less thirty (30) pieces of blasting caps pieces of detonating cords

and bring to this Court to be dealt with as the law may direct.[23]

That the articles seized during the search of Apartment No. 2 are of the same kind and nature as those items enumerated in the search warrant above-quoted appears to us beyond cavil. The items seized from Apartment No. 2 were described with specificity in the warrants in question. The nature of the items ordered to be seized did not require, in our view, a technical description. Moreover, the law does not require that the things to be seized must be described in precise and minute details as to leave no room for doubt on the part of the searching authorities, otherwise, it would be virtually impossible for the applicants to obtain a search warrant as they would not know exactly what kind of things they are looking for.[24] Once described, however, the articles subject of the search

and seizure need not be so invariant as to require absolute concordance, in our view, between those seized and those described in the warrant. Substantial similarity of those articles described as a class or species would suffice.

In People v. Rubio, 57 Phil. 384, 389 (1932), this Court said, "While it is true that the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder, yet the description is required to be specific only in so far as the circumstances will ordinarily allow." Where by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue. As a corollary, however, we could not logically conclude that where the description of those goods to be seized have been expressed technically, all others of a similar nature but not bearing the exact technical descriptions could not be lawfully subject to seizure. Otherwise, the reasonable purpose of the warrant issued would be defeated by mere technicalities.

The case of Bache and Co. (Phil.), Inc. v. Ruiz, 37 SCRA 823, 835 (1971), pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. A careful examination of Search Warrant Nos. 54-95[25] and 55-95[26] shows that they were worded in such a manner that the enumerated items to be seized could bear a direct relation to the offense of violation of Section 1[27] and 3[28] of Presidential Decree No. 1866, as amended, penalizing illegal possession of firearms, ammunitions and explosives. What the warrants authorized was the seizure of articles proscribed by that decree, and no other.

Lastly, on this score, we note that the Court of Appeals ruled that petitioners waived their right to raise any attack on the validity of the search warrants at issue by their failure to file a motion to quash.[29] But, in conducting the search at Apartment No. 8, not just Apartment No. 2 as ordered specifically in the search warrants, the police committed a gross violation we cannot condone. Thus, we conclude that the gun seized in Apartment No. 8 cannot be used in evidence, but those articles including guns, ammunitions, and explosives seized in Apartment No. 2 are admissible in evidence.

Coming now to the two-witness requirement under Section 10, Rule 126 of the Revised Rules of Court, petitioners claim the rule was violated because only one witness signed the receipt for the properties seized. For clarity, let us reproduce the pertinent section:

> SEC. 10. Receipt for the property seized.--The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

Clearly, the two-witness rule applies only in the absence of the lawful occupants of the premises searched. In the case at bar, petitioners were present when the search and seizure operation was conducted by the police at Apartment No. 2. More importantly, petitioner Nabeel Al-Riyami y Nasser admitted being an actual occupant/resident of Apartment No. 2.[30] Hence, we find here no violation of Section 10, Rule 126 of the Revised Rules of Court.

Petitioners contend that they could not be charged with violation of P.D. 1866 because the seized items were not taken actually from their possession. This contention, however, cannot prosper in the light of the settled rule that actual possession of firearms and ammunitions is not an indispensable element for prosecution under P.D. No. 1866. In People v. Dela Rosa, 284 SCRA 158, 168-169 (1998), we clarified that the kind of possession punishable under P.D. 1866 is one where the accused possessed a firearm either physically or constructively with animus

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possidendi or intent to possess said firearm. Whether or not the evidence would show all the elements of P.D. 1866 in this case is a different matter altogether. We shall not preempt issues properly still within the cognizance of courts below.

Likewise, whether or not the articles seized were planted by the police, as claimed by the petitioners, is a matter that must be brought before the trial court. In the same vein, petitioners' claim that the properties seized were not turned over to the proper police custodian is a question of fact best ventilated during trial.

WHEREFORE, the petition is PARTIALLY GRANTED. The search conducted at Apartment No. 8 is hereby declared illegal and the item (.45 caliber pistol) seized therein inadmissible in evidence. However, the search at Apartment No. 2 pursuant to Search Warrant 55-95 is hereby declared valid and legal, and the articles seized from Apartment No. 2 are found admissible in evidence. Let this case be remanded to the Regional Trial Court of Kalookan City, Branch 123, for trial on the merits of Criminal Cases Nos. C-48666-67 with dispatch.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 43-47.

[2] Id. at 47.

[3] Annex "C", Rollo, p. 56.

[4] Annex "C-1", Id. at 57.

[5] Rollo, p. 93.

[6] 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.

[7] Rollo, p. 8.

[8] Id. at 44.

[9] Id. at 10.

[10] Id. at 185.

[11] Id. at 186.

[12] Sec. 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.

Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in

any proceeding.

[13] Sec. 3. Requisites for issuing search warrant.--A search warrant shall not issue but upon probable cause in connection with one specific offense 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 things to be seized.

[14] Sec. 10. Receipt for the property seized.--The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

[15] Rollo, pp. 12-13.

[16] Annex "C", Rollo, p. 56.

[17] Annex "C-1", Id. at 57.

[18] 307 SCRA 253, 273 (1999).

[19] Rollo, p. 92.

[20] Sec. 7. Search of house, room, or premise, to be made in presence of two witnesses.--No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

[21] Rollo, p. 26.

[22] Id. at 56. Underscoring supplied.

[23] Id. at 57. Underscoring supplied.

[24] Kho vs. Makalintal, 306 SCRA 70, 77 (1999).

[25] Annex "C", Rollo, p. 56.

[26] Annex "C-1", Id. at 57.

[27] Section 1. Unlawful Manufacture, Sales, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.--The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

x x x

[28] Sec. 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives.--The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess handgrenade(s), rifle grenade(s), and other explosives, including but not limited to "pillbox bombs", "molotov cocktail bombs", "fire bombs", or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.

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[29] Supra, note 24 at 79.

[30] Rollo, p. 30.

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