

VICENTE AGOTE Y MATOL, PETITIONER, VS. HON. MANUEL F. LORENZO, PRESIDING JUDGE, RTC, BRANCH 43, MANILA AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 142675. July 22, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Vicente Agote y Matol seeks to annul and set aside the following resolutions of the Court of Appeals in CA-G.R. SP No. 2991-UDK, to wit:

- Resolution dated September 14, 1999,[1] dismissing the Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order filed by the petitioner against the Honorable Manuel F. Lorenzo, Presiding Judge, Regional Trial Court, Manila, Branch 43 for refusing to retroactively apply in his favor Republic Act No. 8294[2]; and,
- Resolution dated February 8, 2000,[3] denying petitioner's motion for reconsideration.

As culled from the pleadings on record, the following are the undisputed factual antecedents:

Petitioner Vicente Agote y Matol was earlier charged before the sala of respondent judge with Illegal Possession of Firearms under Presidential Decree No. 1866[4] and violation of COMELEC Resolution No. 2826[5] (Gun Ban), docketed as Criminal Cases No. 96-149820 and 96-149821, respectively, allegedly committed, as follows:

CRIMINAL CASE NO. 96-149820

That on or about April 27, 1996 in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully, knowingly have in possession and under his custody and control, One (1) .38 cal. Rev. without serial no. with four (4) live bullets. Without first having secured from the proper authorities the necessary license therefor.

CONTRARY TO LAW.

CRIMINAL CASE NO. 96-149821

That on or about April 27, 1996, in the City of Manila, Philippines, the said accused did then and there, willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) .38 cal. Rev. without serial number, with four (4) live ammunition/bullets in the chamber, by then and there carrying the same along V. Mapa Ext. Sta. Mesa, this City, which is a public place on the aforesaid date which is covered by an election period, without first securing the written authority from the COMELEC, as provided for by the COMELEC Resolution No. 2828, in relation to RA No. 7166 (Gun Ban).

CONTRARY TO LAW.

On arraignment, petitioner pleaded "Not Guilty" to both charges. Thereafter, the two (2) cases were tried jointly.

Eventually, in a decision dated May 18, 1999, the trial court rendered a judgment of conviction in both cases, separately sentencing petitioner to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years eight (8) months and one (1) day of reclusion temporal, as maximum, in accordance with PD. No. 1866 in Crim. Case No. 96-149820 (illegal possession of firearm), and to a prison term of one (1) year in Crim. Case No. 96-149821 (violation of the COMELEC Resolution on gun ban).

Meanwhile, on June 6, 1997, Republic Act No. 8294[6] was approved into law.

Pointing out, among others, that the penalty for illegal possession of firearms under P.D. No. 1866 has already been reduced by the subsequent enactment of Rep. Act No. 8294, hence, the latter law, being favorable to him, should be the one applied in determining his penalty for illegal possession of firearms, petitioner moved for a reconsideration of the May 18, 1999 decision of the trial court.

In its order dated July 15, 1999,[7] however, the trial court denied petitioner's motion, saying:

While the law (R.A. 8294) is indeed favorable to the accused and therefore should be made retroactive we are also guided by Art. 4 of the Civil Code which states that laws shall have no retroactive effect, unless the contrary is provided. Republic Act 8294 did not so provide that it shall have a retroactive effect. The Supreme Court likewise in the case of Padilla vs. CA declared: 'The trial court and the respondent court are bound to apply the governing law at the time of the appellant's commission of the offense for it is a rule that laws are repealed only by subsequent ones. Indeed, it is the duty of judicial officers to respect and apply the law as it stands.

Therefrom, petitioner went to the Court of Appeals on a petition for certiorari with prayer for a temporary restraining order, thereat docketed as CA-G.R. SP No. 2991-UDK.

In the herein assailed resolution dated September 14, 1999,[8] the appellate court dismissed petitioner's recourse on two (2) grounds, to wit: (a) the remedy of certiorari availed of by petitioner is improper since he should have appealed from the July 15, 1999 order of the trial court; and (b) lack of jurisdiction, as the issue involved is a pure question of law cognizable by the Supreme Court.

With his motion for reconsideration having been denied by the appellate court in its subsequent resolution of February 8, 2000,[9] petitioner is now with us, submitting for resolution the following issues: (1) whether the Court of Appeals erred in dismissing his petition for certiorari; and (2) whether the courts below erred in not giving Rep. Act No. 8294 a retroactive application.

The petition is partly meritorious.

At the outset, it must be stressed that petitioner never put in issue the factual findings of the trial court. What he questions is said court's legal conclusion that Rep. Act No. 8294 cannot be retroactively applied to him. Unquestionably, the issue raised is one purely of law. As we have said in *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*: [10]

For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any one of them. And the distinction is well-known: there is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of the facts alleged.

Considering that "judgments of regional trial courts in the exercise of their original jurisdiction are to be elevated to the Court of Appeals in cases when appellant raises questions of fact or mixed questions of fact and law", while "appeals from judgments of the [same courts] in the exercise of their original jurisdiction must be brought directly to the Supreme Court in cases where the appellant raises only questions of law" [11], petitioner should have

appealed the trial court's ruling to this Court by way of a petition for review on certiorari in accordance with Rule 45 of the 1997 Rules of Civil Procedure, as amended,[12]pursuant to Rule 41, Section 2 (c) of the same Rules, viz:

SEC. 2. Modes of appeal. -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Appeal by certiorari. - In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

By reason, then, of the availability to petitioner of the remedy of a petition for review under Rule 45, his right to resort to a petition for certiorari under Rule 65 was effectively foreclosed, precisely because one of the requirements for the availment of the latter remedy is that "there should be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law",[13] the remedies of appeal and certiorari being mutually exclusive and not alternative or successive.[14]

As correctly observed by the Court of Appeals, what petitioner should have done was to take an appeal from the trial court's order of July 15, 1999 which denied his motion for reconsideration of the May 18, 1999 judgment of conviction.

Petitioner's case is worse compounded by the fact that even his period for appeal had already prescribed when he filed with the Court of Appeals his certiorari petition in CA-G.R. SP No. 2991-UDK. The Rollo of said case reveals that petitioner received his copy of the trial court's order denying his motion for reconsideration on July 20, 1999. As the same Rollo shows, it was only on August 23, 1999, or after more than fifteen (15) days when petitioner filed his wrong remedy of certiorari with the appellate court.

Be that as it may, the Court feels that it must squarely address the issue raised in this case regarding the retroactivity of Rep. Act No. 8294, what with the reality that the provisions thereof are undoubtedly favorable to petitioner. For this purpose, then, we shall exercise our prerogative to set aside technicalities in the Rules and "hold the bull by its horns", so to speak. After all, the power of this Court to suspend its own rules whenever the interest of justice requires is not without legal authority or precedent. In *Solicitor General, et. al. vs. The Metropolitan Manila Authority*,[15]we held:

Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning `pleading, practice and procedure in all courts.' In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules. xxx

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We have made similar rulings in other cases, thus:

Be it remembered that rules of procedure are but mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. xxx Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.

We shall now proceed to determine whether the provisions of Rep. Act No. 8294 amending P.D. No. 1866 can be retroactively applied to this case.

Here, the two (2) crimes for which petitioner was convicted by the trial court, i.e., (1) illegal possession of

firearms under P.D. No. 1866 and (2) violation of COMELEC Resolution No. 2826 on gun ban, were both committed by the petitioner on April 27, 1996. For the crime of illegal possession of firearms in Crim. Case No. 96-149820, he was sentenced to suffer a prison term ranging from ten (10) years and one (1) day of prision mayor, as minimum, to (18) eighteen years, eight (8) months and one (1) day of reclusion temporal, as maximum, in accordance with P.D. No. 1866, Section 1 of which reads:

SECTION 1. Unlawful Manufacture, Sale, 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 firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. (Emphasis supplied)

When Rep. Act No. 8294 took effect on July 6, 1997,[16] the penalty for illegal possession of firearms was lowered, depending on the class of firearm possessed, viz:

SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

SECTION 1. Unlawful Manufacture, Sale, 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 prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested. (Emphasis supplied)

Based on the foregoing, petitioner contends that the reduced penalty under Rep. Act No. 8294 should be the one imposed on him. Significantly, in its Manifestation In Lieu of Comment,[17] the Office of the Solicitor General agrees with the petitioner, positing further that the statement made by this Court in *People vs. Jayson*[18] to the effect that the provisions for a lighter penalty under Rep. Act No. 8294 does not apply if another crime has been committed, should not be applied to this case because the proviso in Section 1 of said law that "no other crime was committed" must refer only to those crimes committed with the use of an unlicensed firearm and not when the other crime is not related to the use thereof or where the law violated merely criminalizes the possession of the same, like in the case of election gun ban, as here.

As early as August 1997, the month after Rep. Act No. 8294 took effect,[19] this Court has pronounced in *Gonzales vs. Court of Appeals*[20] that said law must be given retroactive effect in favor of those accused under P.D. No. 1866. Since then, this Court had consistently adhered to the *Gonzales* ruling.[21]

For sure, in *People vs. Valdez*,[22] where the accused was charged with the complex crime of multiple murder with double frustrated murder and illegal possession of firearms and ammunitions under two separate informations, this Court even took a bolder stance by applying Rep. Act No. 8294 retroactively so that the accused therein may not be convicted of the separate crime of illegal possession of firearms, but refused to apply the same retroactively so as to aggravate the crime of murder. The *Valdez* ruling had been applied in a host of

subsequent cases.[23]

Yet, in other cases,[24] although the Court had given Rep. Act No. 8294 retroactive effect so as to prevent the conviction of an accused of the separate crime of illegal possession of firearm when the said unlicensed firearm was "used" to commit the crime of murder or homicide, the Court did not appreciate this "use" of such unlicensed firearm as an aggravating circumstance as provided therein, when the "use" of an unlicensed firearm was not specifically alleged in the information, as required by the Rules on Criminal Procedure.

In the light of the existing rulings and jurisprudence on the matter, the present case takes center stage presenting, this time, another twist, so to speak. Petitioner, who was charged of illegal possession of firearms was also charged of another offense: Violation of COMELEC Resolution No. 2826 (Gun Ban), but the unlicensed firearm was not "used" or discharged in this case. The question then which appears to be of first impression, is whether or not the unlicensed firearm should be actually "used" and discharged in the course of committing the other crime in order that Sec. 1, Rep. Act No. 8294 will apply so that no separate crime of illegal possession of firearms may be charged.

Let us take a look at the jurisprudence once again. In *Cupcupin vs. People*,[25] the accused was charged and convicted for two (2) separate crimes of illegal possession of firearms, and illegal possession of prohibited drugs. In the more recent case of *People vs. Almeida*,[26] however, although the accused was acquitted of the separate charge of illegal possession of firearm for lack of evidence, the Court nevertheless made the following clear pronouncement:

Furthermore, in any event, the Court has ruled in previous cases that in view of the enactment of Republic Act No. 8294, there can be no separate offense of illegal possession of firearms and ammunition if there is another crime committed such as, in this case, that of illegal possession of dangerous drugs. (Emphasis supplied)

In *Almeida*, it should be noted that the unlicensed firearm was merely found lying around, together with the prohibited drugs, and therefore, was not being "used" in the commission of an offense.

Given this Court's aforequoted pronouncement in *Almeida*, can the accused in the present case still be separately convicted of two (2) offenses of illegal possession of firearms and violation of gun ban, more so because as in *Almeida*, the unlicensed firearm was not actually "used" or discharged in committing the other offense?

In *People vs. Walpan M. Ladjaalam*,[27] this Court, interpreting the subject proviso in Section 1 of Rep. Act No. 8294, applied the basic principles in criminal law, and categorically held:

xxx A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the 'other crime' is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused. Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. xxx

xxx xxx xxx

xxx The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that 'no other crime was committed by the person arrested'. If the intention of the law in the second paragraph were to

refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.(Emphasis supplied).

The aforementioned ruling was reiterated and applied in the subsequent cases of *People vs. Garcia*,^[28] where the judgment of conviction of the accused-appellants for illegal possession of firearms was set aside there being another crime - kidnapping for ransom - which they were perpetrating at the same time; *People vs. Bernal*,^[29] where the Court retroactively applied Rep. Act No. 8294 in accused-appellant's favor because it would mean his acquittal from the separate offense of illegal possession of firearms; and *People vs. Bustamante*,^[30] where, in refusing to convict the accused-appellant of the separate offense of illegal possession of firearms, the Court declared that insofar as it is favorable to the appellant, the provisions of Rep. Act No. 8294 should be applied liberally and retroactively in that appellant must be acquitted of the charge of illegal possession of firearms.

Guided by the foregoing, the Court cannot but set aside petitioner's conviction in Criminal Case No. 96-149820 for illegal possession of firearm since another crime was committed at the same time, i.e., violation of COMELEC Resolution No. 2826 or the Gun Ban.

Admittedly, this ruling is not without misgivings considering that it would mean petitioner's acquittal of the more serious offense of illegal possession of firearms which carries a much heavier penalty than violation of the COMELEC gun-ban resolution. However, as we have rationalized in *Ladjaalam*:^[31]

xxx Indeed, the accused may evade conviction for illegal possession of firearms by using such weapons in committing an even lighter offense, like alarm and scandal or slight physical injuries, both of which are punishable by *arresto menor*. This consequence, however, necessarily arises from the language of RA 8294, whose wisdom is not subject to the Court's review. Any perception that the result reached here appears unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a new meaning detached from the manifest intent and language of the legislature. Our task is constitutionally confined only to applying the law and jurisprudence to the proven facts, and we have done so in this case.

The solemn power and duty of the Court to interpret and apply the law does not include the power to correct by reading into the law what is not written therein. While we understand respondent *People's* contention that the "use" of the firearm seemed to have been the main consideration during the deliberations of the subject provision of Rep. Act No. 8294, the fact remains that the word "use" never found its way into the final version of the bill which eventually became Rep. Act No. 8294. The Court's hands are now tied and it cannot supply the perceived deficiency in the final version without contravening the most basic principles in the interpretation of penal laws which had always leaned in favor of the accused. Under our system of government where powers are allocated to the three (3) great branches, only the Legislature can remedy such deficiency, if any, by proper amendment of Sec. 1 of Rep. Act No. 8294.

As written, Sec. 1, Rep. Act No. 8294 restrains the Court from convicting petitioner of the separate crime of illegal possession of firearm despite the fact that, as in *Almeida*, the unlicensed firearm was not actually "used". For sure, there is, in this case, closer relation between possession of unlicensed firearm and violation of the COMELEC gun-ban than the illegal possession of unlicensed firearm to the crime of illegal possession of prohibited drugs in *Almeida*.

WHEREFORE, Criminal Case No. 96-149820 for illegal possession of firearms is hereby DISMISSED while the judgment of conviction in Criminal Case No. 96-149821 for violation of COMELEC Resolution No. 2826 in relation to Rep. Act No. 7166 (Gun Ban), is AFFIRMED.

Since petitioner has already served more than the penalty imposed upon him by the trial court in Criminal Case

No. 96-149821, his immediate release from custody is hereby ORDERED unless detained for some other lawful cause.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eloy R. Bello, Jr. (ret.) and concurred in by Associate Justices Jainal D. Rasul (ret.) and Ruben T. Reyes.

[2] "An Act Amending the Provisions of Presidential Decree No. 1866, As Amended".

[3] Rollo, pp.30-31.

[4] Entitled "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".

[5] Mistakenly referred to as No. 2828 in the Information.

[6] Supra.

[7] Rollo, p. 25.

[8] Rollo, pp. 27-28a.

[9] Rollo, pp. 30-31.

[10] 297 SCRA 602, 615 [1998].

[11] Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals, supra, at p. 614.

[12] "Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth."

[13] Section 1, Rule 65, 1997 Rules of Court.

[14] Bernardo vs. CA, 275 SCRA 423, 426 [1997].

[15] G.R. No. 102782, Dec. 11, 1991, 204 SCRA 837, 842-843.

[16] R.A. 8294 was approved on June 6, 1997 and published on June 21, 1997.

[17] Rollo, pp. 54-55.

[18] 282 SCRA 166 [1997].

[19] RA 8294 took effect on July 6, 1997.

[20] 277 SCRA 518 [1997].

[21] *Patrano vs. CA*, October 31, 1997; *People vs. Bergante*, February 27, 1998; *People vs. Molina*, July 22, 1998.

[22] 304 SCRA 611 [1999].

[23] *People vs. Narciso*, November 21, 2002; *People vs. Lopez*, January 14, 2003; *People vs. Bustamante*, February 12, 2003.

[24] *People vs. Ave*, October 18, 2002; *People vs. Delim*, January 28, 2003; *People vs. Sapigao*, June 18, 2003; *People vs. Lachica*, September 3, 2003.

[25] 392 SCRA 203 [2002].

[26] 418 SCRA 254 [2003].

[27] 340 SCRA 617, 648-649, 650 [2000].

[28] 373 SCRA 134, 160, January 15, 2002

[29] 388 SCRA 211, 224, September 2, 2002.

[30] 397 SCRA 326, 344, February 12, 2003.

[31] *Supra* at pp. 650-651.

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