ANGEL CELINO, SR., PETITIONER, VS. COURT OF APPEALS, CEBU CITY, HON. DELANO F. VILLARUZ, PRESIDING JUDGE, BRANCH 16, REGIONAL TRIAL COURT, CAPIZ, ROXAS CITY, AND PEOPLE OF THE P...

G.R. NO. 170562. June 29, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails the Court of Appeals' Decision dated April 18, 2005[1] affirming the trial court's denial of petitioner Angel Celino, Sr.'s Motion to Quash; and Resolution dated September 26, 2005[2] denying petitioner's Motion for Reconsideration of the said Decision.

The following facts are not disputed:

Two separate informations were filed before the Regional Trial Court of Roxas City charging petitioner with violation of Section 2(a) of COMELEC Resolution No. 6446 (gun ban),[3] and Section 1, Paragraph 2 of Republic Act No. (R.A.) 8294[4] (illegal possession of firearm), as follows:

> Criminal Case No. C-137-04
>
> That on or about the 12[th] day of May, 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and knowingly carry outside of his residence an armalite rifle colt M16 with serial number 3210606 with two (2) long magazines each loaded with thirty (30) live ammunitions of the same caliber during the election period - December 15, 2005 to June 9, 2004 - without first having obtained the proper authority in writing from the Commission on Elections, Manila, Philippines.
>
> CONTRARY TO LAW. [5]
>
> Criminal Case No. C-138-04
>
> That on or about the 12[th] day of May, 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and control one (1) armalite rifle colt M16 with serial number 3210606 with two (2) long magazines each loaded with thirty (30) live ammunitions of the same caliber without first having obtained the proper license or necessary permit to possess the said firearm.
>
> CONTRARY TO LAW.[6]

Upon arraignment in Criminal Case No. C-138-04, petitioner pleaded not guilty to the gun ban violation charge.[7]

Prior to his arraignment in Criminal Case No. C-137-04, petitioner filed a Motion to Quash[8] contending that he "cannot be prosecuted for illegal possession of firearms x x x if he was also charged of having committed another

crime of [sic] violating the Comelec gun ban under the same set of facts x x x."[9]

By Order of July 29, 2004,[10] the trial court denied the Motion to Quash on the basis of this Court's[11] affirmation in Margarejo v. Hon. Escoses[12] of therein respondent judge's denial of a similar motion to quash on the ground that "the other offense charged x x x is not one of those enumerated under R.A. 8294 x x x." [13] Petitioner's Motion for Reconsideration was likewise denied by September 22, 2004 Resolution,[14] hence, petitioner filed a Petition for Certiorari[15] before the Court of Appeals.

By Decision dated April 18, 2005,[16] the appellate court affirmed the trial court's denial of the Motion to Quash. Petitioner's May 9, 2005 Motion for Reconsideration[17] having been denied by Resolution of September 26, 2005,[18] petitioner filed the present petition.

The petition fails.

Petitioner's remedy to challenge the appellate court's decision and resolution was to file a petition for review on certiorari under Rule 45 on or before October 20, 2005 or 15 days after he received a copy of the appellate court's resolution on October 5, 2005[19]denying his motion for reconsideration. Instead, petitioner chose to file the present petition under Rule 65 only on December 2, 2005,[20] a good 58 days after he received the said resolution.

Certiorari cannot be used as a substitute for lost appeal. Certiorari lies only when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Why the question being raised by petitioner, i.e., whether the appellate court committed grave abuse of discretion, could not have been raised on appeal, no reason therefor has been advanced.[21]

While this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for certiorari as having been filed under Rule 45, especially if filed within the reglementary period under said Rule, it finds nothing in the present case to warrant a liberal application of the Rules, no justification having been proffered, as just stated, why the petition was filed beyond the reglementary period,[22] especially considering that it is substantially just a replication of the petition earlier filed before the appellate court.

Technicality aside, the petition fails just the same.

The relevant provision of R.A. 8294 reads:

> 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. " x x x.
>
> "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.
>
> "If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.
>
> "If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime

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> of rebellion, or insurrection, sedition, or attempted coup d'etat.
>
> x x x x
>
> (Underscoring supplied)

The crux of the controversy lies in the interpretation of the underscored proviso. Petitioner, citing Agote v. Lorenzo,[23] People v. Ladjaalam,[24] and other similar cases,[25] contends that the mere filing of an information for gun ban violation against him necessarily bars his prosecution for illegal possession of firearm. The Solicitor General contends otherwise on the basis of Margarejo v. Hon. Escoses [26] and People v. Valdez.[27]

In Agote,[28] this Court affirmed the accused's conviction for gun ban violation but exonerated him of the illegal possession of firearm charge because it "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."[29] Agote is based on Ladjaalam[30] where this Court held:

> x x x A simple reading [of RA 8294] 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. x x x
>
> x x x x
>
> x x x 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.[31]

The law is indeed clear. The accused can be convicted of illegal possession of firearms, provided no other crime was committed by the person arrested. The word "committed" taken in its ordinary sense, and in light of the Constitutional presumption of innocence,[32] necessarily implies a prior determination of guilt by final conviction resulting from successful prosecution or voluntary admission.[33]

Petitioner's reliance on Agote, Ladjaalam, Evangelista, Garcia, Pangilinan, Almeida, and Bernal is, therefore, misplaced. In each one of these cases, the accused were exonerated of illegal possession of firearms because of their commission, as shown by their conviction, of some other crime.[34] In the present case, however, petitioner has only been accused of committing a violation of the COMELEC gun ban. As accusation is not synonymous with guilt, there is yet no showing that petitioner did in fact commit the other crime charged.[35] Consequently, the proviso does not yet apply.

More applicable is Margarejo[36] where, as stated earlier, this Court affirmed the denial of a motion to quash an information for illegal possession of firearm on the ground that "the other offense charged [i.e., violation of gun ban] x x x is not one of those enumerated under R.A. 8294 x x x."[37] in consonance with the earlier pronouncement in Valdez[38] that "all pending cases involving illegal possession of firearm should continue to be

prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved x x x."[39]

In sum, when the other offense involved is one of those enumerated under R.A. 8294, any information for illegal possession of firearm should be quashed because the illegal possession of firearm would have to be tried together with such other offense, either considered as an aggravating circumstance in murder or homicide,[40] or absorbed as an element of rebellion, insurrection, sedition or attempted coup d'etat.[41] Conversely, when the other offense involved is not one of those enumerated under R.A. 8294, then the separate case for illegal possession of firearm should continue to be prosecuted.

Finally, as a general rule, the remedy of an accused from the denial of his motion to quash is for him to go to trial on the merits, and if an adverse decision is rendered, to appeal therefrom in the manner authorized by law.[42] Although the special civil action for certiorari may be availed of in case there is a grave abuse of discretion,[43] the appellate court correctly dismissed the petition as that vitiating error is not attendant in the present case.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Carpio, Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), on official leave.

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[1]CA rollo at 99-103.

[2]Id. at 149.

[3]Rules and Regulations on: (A) Bearing, Carrying or Transporting Firearms or Other Deadly Weapons; (B) Security Personnel or Bodyguards; (C) Bearing Arms By Any Member of Security or Police Organization of Government Agencies and Other Similar Organization; (D) Organization or Maintenance of Reaction Forces During the Election Period in Connection with the May 10, 2004, Synchronized National and Local Elections.

[4] An Act Amending the Provisions of Presidential Decree No. 1866, as Amended, entitled "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISTRIBUTION OF FIREARMS, AMMUNITIONS, OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITIONS OR EXPLOSIVES AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES." (Took effect July 6, 1997)

[5] CA rollo at 24. No copy found in RTC records.

[6]Records, p. 1.

[7] Rollo, p. 8.

[8] Records, pp. 25-31.

[9] Id. at 27.

[10]Id. at 48-52.

[11] En Banc.

[12]417 Phil. 506 (2001).

[13]Id. at 512.

[14]Records, p. 91.

[15] CA rollo, pp. 2-60.

[16]Id. at 99-103. Penned by Justice Arsenio J. Magpale with the concurrence of Justices Sesinando E. Villon and Enrico A. Lanzanas.

[17] Id. at 108-117.

[18]Id. at 132. Penned by Justice Arsenio J. Magpale with the concurrence of Justices Sesinando E. Villon and Enrico A. Lanzanas.

[19] Id. at 131.

[20] Rollo, p. 128.

[21]Heirs of Griño v. Department of Agrarian Reform, G.R. No. 165073, June 30, 2006, 494 SCRA 329, 341 citing Republic v. Court of Appeals, 379 Phil. 92, 97 (2000).

[22] Id. at 342, citing The President, Philippine Deposit Insurance Corporation v. Court of Appeals, G.R. No. 151280, June 10, 2004, 431 SCRA 682, 688.

[23] G.R. No. 142675, July 22, 2005, 464 SCRA 60.

[24]395 Phil. 1 (2000).

[25] Evangelista v. Sistoza, 414 Phil. 874 (2001); People v. Garcia, 424 Phil. 158 (2002); People v. Bernal, 437 Phil. 11 (2002); People v. Pangilinan, 443 Phil. 198 (2003); and People v. Almeida, 463 Phil. 637 (2003).

[26]Supra note 12.

[27] 364 Phil. 259 (1999).

[28] Supra note 23.

[29] Id. at 75.

[30]Supra note 24.

[31] Id. at 35-36.

[32] CONSTITUTION, Art. III, Sec. 14, par. (2).

[33] Vide People v. Concepcion, 55 Phil. 485, 491 (1930), where this Court held that "inasmuch as every defendant is presumed innocent until convicted by a competent court after due process of law of the crime with which he is charged, [the accused] is still innocent in the eyes of the law, notwithstanding the filing of the information against him for the aforesaid crime."

[34] Maintenance of drug den and direct assault with attempted homicide in Ladjaalam; robbery in Evangelista; kidnapping for ransom with serious illegal detention in Garcia and in Pangilinan; murder and gun ban violation in Bernal; illegal possession of drugs in Almeida; and gun ban violation in Agote.

[35]On the contrary, petitioner even claimed, through his "not guilty" plea in Criminal Case No. C-137-04 that he did not commit a violation of the COMELEC Gun Ban. (Rollo, p. 8)

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[36]Supra note 12.

[37]Supra note 13.

[38]Supra note 27.

[39] Id. at 279.

[40]R.A. No. 8294, Sec. 1.

[41] Ibid.

[42] Soriano v. Casanova, G.R. No. 163400, March 31, 2006, 486 SCRA 431, 439.

[43] Socrates v. Sandiganbayan, 324 Phil. 151, 176 (1996).

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