

JOSELITO PERALTA Y ZARENO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 221991. August 30, 2017

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is a petition for review on certiorari[1] filed by petitioner Joselito Peralta y Zareno (Peralta) assailing the Decision[2] dated May 29, 2015 and the Resolution[3] dated December 8, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35193, which affirmed the Decision[4] dated July 31, 2012 of the Regional Trial Court of Dagupan City, Branch 44 (RTC) in Crim. Case No. 2008-0659-D finding him guilty beyond reasonable doubt of illegal possession of firearms and ammunition under Section 1 of Presidential Decree No. (PD) 1866,[5] as amended by Republic Act No. (RA)8294.[6]

The Facts

The instant case arose from an Information[7] dated November 20, 2008 charging Peralta of illegal possession of firearms and ammunition, defined and penalized under PD 1866, as amended, the accusatory portion of which reads:

That on or about the 18[th] day of November, 2008, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSELITO PERALTA y Zareno, did then and there, willfully, unlawfully and criminally, have in his possession, custody, and control one (1) cal. 45 with Serial No. 4517488 with magazine with five (5) live ammunitions, without authority to possess the same.

Contrary to PD 1866, as amended by RA 8294.[8]

The prosecution alleged that at around 11 o'clock in the evening of November 18, 2008, a team consisting of Police Officer 3 Christian A. Carvajal (PO3 Carvajal), one Police Officer Lavarias, Police Officer 2 Bernard Arzadon (PO2 Arzadon), and Police Officer 3 Lucas Salonga (PO3 Salonga) responded to a telephone call received by their desk officer-on-duty that there was a man firing a gun at the back of the PLDT Building in Pantal District, Dagupan City.[9] Upon arrival thereat, the police officers saw two (2) men walking, later identified as Peralta and his companion, Larry Calimlim (Calimlim), holding a gun and a knife respectively.[10] Upon seeing the police officers, the men became uneasy, which prompted the police officers to swoop in. Upon apprehension, they recovered a caliber .45 pistol with Serial Number 4517488 containing a magazine with five (5) live ammunitions from Peralta and a knife from Calimlim.[11] The men were then brought to the Region I Medical Center in Dagupan City, and later, to the community precinct for paraffin and gun powder residue test. Meanwhile, the pistol and the magazine with live ammunitions were endorsed to the duty investigator.[12]

In his defense, Peralta denied the accusation against him and presented a different narration of facts. According to him, he was riding a motorcycle with Calimlim when they were flagged down by the police officers. While admitting that the latter recovered a knife from Calimlim, Peralta vigorously denied having a firearm with him, much less illegally discharging the same.[13] He pointed out that it was impossible for him to carry a gun at the

time and place of arrest since they were near the barangay hall and the respective residences of Police Officer Salonga and mediaman Orly Navarro.[14] Further, Peralta averred that upon arrival at the police station, he was forced to admit possession of the gun allegedly recovered from him, and that they were subjected to a paraffin test but were not furnished with copies of the results thereof.[15] Finally, Peralta claimed that he and Calimlim were merely framed up, after his brother who operated a "hataw" machine went bankrupt and stopped giving "payola" to the police officials.[16]

The RTC Ruling

In a Decision[17] dated July 31, 2012, the RTC found Peralta guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for a period of six (6) years and one (1) day of prision mayor, as minimum, to eight (8) years of prision mayor, as maximum, and to pay a fine of P30,000.00.[18]

The RTC found that the prosecution had established the existence of the elements of the crime charged, considering that PO3 Carvajal positively identified him walking at the Pantalan District, Dagupan City carrying a firearm and that he had no license to carry the same, as per the Certification[19] issued by the Firearms and Explosives Office in Camp Crame, Quezon City.[20]

Aggrieved, Peralta appealed[21] to the CA.

The CA Ruling

In a Decision[22] dated May 29, 2015, the CA affirmed Peralta's conviction in toto.[23] It concurred with the RTC's finding that the prosecution had established all the elements of the crime charged, namely, the existence of firearm and ammunitions, and the lack of the corresponding license/s by the person possessing or owning the same. In this relation, the CA held that the police officers conducted a valid warrantless arrest on Peralta under the plain view doctrine, considering that the latter was walking at the Pantalan District carrying a firearm in full view of the arresting policemen, who arrived at the scene in response to a call they received at the police station.[24]

Further, for lack of substantiation, it did not lend any credence to Peralta's claim that he was only set up by the police officers as revenge for his brother's failure to give "payola" to the police officials in connection with his operation of the "hataw" machine.[25] Finally, the CA ruled that the results of the paraffin test were immaterial to Peralta's conviction of the crime charged since what is being punished by the law is the possession of a firearm and ammunitions without any license or permit to carry the same.[26]

Undaunted, Peralta moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated December 8, 2015; hence, this petition.

The Issue Before the Court

The sole issue for the Court's Resolution is whether or not the CA correctly upheld Peralta's conviction for Illegal Possession of Firearm and Ammunition.

The Court's Ruling

The petition is without merit.

At the outset, the Court reiterates that Peralta was charged with illegal possession of firearms and ammunition for carrying a .45 caliber pistol with a magazine containing five (5) live ammunitions, a crime defined and penalized under Section 1 of PD 1866, as amended by RA 8294, pertinent portions of which read:

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 xxx shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any xxx firearm, xxx part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition xxx.

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.

X X X X

The corpus delicti in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the corpus delicti, the prosecution has the burden of proving that: (a) the firearm exists; and (b) the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[29]

In this case, the prosecution had proven beyond reasonable doubt the existence of the aforesaid elements, considering that: (a) the police officers positively identified Peralta as the one holding a .45 caliber pistol with Serial Number 4517488 with magazine and live ammunitions, which was seized from him and later on, marked, identified, offered, and properly admitted as evidence at the trial; and (b) the Certification[30] dated August 10, 2011 issued by the Firearms and Explosives Office of the Philippine National Police which declared that Peralta "is not a licensed/registered firearm holder of any kind and calibre, specifically Caliber .45 Pistol, make (unknown) with Serial Number 4517488 per verification from the records of this office as of this date." [31]

That the prosecution failed to present the results of the paraffin test made on Peralta is inconsequential since it is not indicative of his guilt or innocence of the crime charged. In *People v. Gaborne*, [32] the Court discussed the probative value of paraffin tests, to wit:

Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[33]

Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[34]

In an attempt to absolve himself from criminal liability, Peralta questioned the legality of the warrantless arrest and subsequent search made on him. According to him, there was no reason for the police officers to arrest him without a warrant and consequently, conduct a search incidental thereto. As such, the firearm and ammunitions purportedly recovered from him are rendered inadmissible in evidence against him.[35]

Such contention is untenable.

Section 2, Article III[36] of the 1987 Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search

and seizure becomes "unreasonable" within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III[37] of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[38]

One of the recognized exceptions to the need for a warrant before a search may be effected is a search incidental to a lawful arrest. In this instance, the law requires that there first be a lawful arrest before a search can be made - the process cannot be reversed.[39]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should - as a general rule - be complied with:

Section 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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances 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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect in flagrante delicto; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[40]

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.[41]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.[42]

In this case, records show that upon the police officers' arrival at Pantalan District, Dagupan City, they saw Peralta carrying a pistol, in plain view of everyone. This prompted the police officers to confront Peralta regarding the pistol, and when the latter was unable to produce a license for such pistol and/or a permit to carry the same, the former proceeded to arrest him and seize the pistol from him. Clearly, the police officer conducted a valid in

flagrante delicto warrantless arrest on Peralta, thus, making the consequent search incidental thereto valid as well. At this point, it is well to emphasize that the offense of illegal possession of firearms is *malum prohibitum* punished by special law and, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.[43] In *People v. PO2 Abriol*,[44] the court ruled that the carrying of firearms and ammunition without the requisite authorization - a clear violation of PD 1866, as amended - is enough basis for the conduct of a valid in flagrante delicto warrantless arrest.[45] Given these, Peralta can no longer question the validity of his arrest and the admissibility of the items seized from him on account of the search incidental to such arrest.

As to the proper penalty to be imposed on Peralta, the courts a quo en-ed in sentencing him to suffer the penalty of imprisonment for a period of six (6) years and one (1) day of prision mayor, as minimum, to eight (8) years of prision mayor, as maximum. As may be gleaned from Section 1 of PD 1866, as amended, the prescribed penalties for the crime Peralta committed is "prision mayor in its minimum period," or imprisonment for a period of six (6) years and one (1) day up to eight (8) years, and a fine of P30,000.00. Notably, while such crime is punishable by a special penal law, the penalty provided therein is taken from the technical nomenclature in the Revised Penal Code (RPC). In *Quimvel v. People*,[46] the Court succinctly discussed the proper treatment of prescribed penalties found in special penal laws vis-a-vis Act No. 4103,[47] otherwise known as the Indeterminate Sentence Law, viz.:

Meanwhile, Sec. 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed. Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon* that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[48]

Otherwise stated, if the special penal law adopts the nomenclature of the penalties under the RPC, the ascertainment of the indeterminate sentence will be based on the rules applied for those crimes punishable under the RPC.[49]

Applying the foregoing to the instant case, the Court deems it proper to adjust the indeterminate period of imprisonment imposed on Peralta to four (4) years, nine (9) months, and eleven (11) days of prision correccional, as minimum, to six (6) years, eight (8) months, and one (1) day of prision mayor, as maximum.[50] Finally, the imposition of fine in the amount of P30,000.00 stands.

WHEREFORE, the petition is DENIED. The Decision dated May 29, 2015 and the Resolution dated December 8, 2015 of the Court of Appeals in CA-G.R. CR No. 35193, which upheld the Decision dated July 31, 2012 of the Regional Trial Court of Dagupan City, Branch 44 in Crim. Case No. 2008-0659-D finding petitioner Joselito Peralta y Zareno (petitioner) GUILTY beyond reasonable doubt of Illegal Possession of Firearms and Ammunition, defined and penalized under Section 1, paragraph 2 of PD 1866, as amended by RA 8294, are hereby AFFIRMED with MODIFICATION, sentencing petitioner to suffer the penalty of imprisonment for an indeterminate period of four (4) years, nine (9) months, and eleven (11) days of prision correccional, as minimum, to six (6) years, eight (8) months, and one (1) day of prision mayor, as maximum, and to pay a fine in the amount of P30,000.00.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Peralta, Caguioa, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2475 dated August 29, 2017.

[1] Rollo, pp. 12-29.

[2] Id. at 33-50. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang concurring.

[3] Id. at 52.

[4] Id. at 69-72. Penned by Judge Genoveva Coching-Maramba.

[5] 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," approved on June 29, 1983.

[6] Entitled "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 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,'" approved on June 6, 1997.

[7] Records, pp. 1-2.

[8] Id. at 1.

[9] Rollo, p. 35.

[10] Id.

[11] Id. at 69.

[12] Id. at 35-36. See also id. at 69-70.

[13] Id. at 36-37.

[14] Id. at 70.

[15] Id. at 37 and 70.

[16] Id.

[17] Id. at 69-72.

[18] Id. at 72.

[19] Records, p. 127. Signed by Police Chief Inspector Rodrigo Benedicto H. Sarmiento, Jr.

[20] See id. at 71.

[21] See Brief for the Accused-Apellant dated July 30, 2014. Rollo, pp. 54-68.

[22] Id. at 33-50.

[23] See id. at 49.

[24] See id. at 40-43.

[25] Id. at 42.

[26] Id. at 45.

[27] Dated June 30, 2015. Id. at 86-93.

[28] Id. at 52.

[29] Sayco v. People, 571 Phil. 73, 82-83 (2008); citations omitted.

[30] Records, p. 127.

[31] Id.

[32] See G.R. No. 210710, July 27, 2016.

[33] See id, citing People v. Cajumocan, 474 Phil. 349, 357 (2004).

[34] See People v. Matibag, 757 Phil. 286, 293 (2015), citing Almojuela v. People, 734 Phil. 636, 651 (2014).

[35] See rollo, p. 21.

[36] Section 2, Article III of the 1987 constitution states:

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.

[37] Section 3 (2), Article III of the 1987 Constitution states:

Sec. 3. x x x.

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

[38] See Sindac v. People, G.R. No. 220732, September 6, 2016, citing People v. Manago G.R. No. 212340, August 17, 2016.

[39] See id.

[40] See id., citing Comerciante v. People, 764 Phil. 627, 634-635 (2015).

[41] See id.

[42] See id.

[43] See Fajardo v. People, 654 Phil. 184, 203 (2011), citing People v. De Gracia, G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716, 726-727.

[44] 419 Phil. 609 (2001).

[45] See *id.* at 635-636; citation omitted.

[46] See G.R. No. 214497, April 18, 2017.

[47] Entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1993. See *Quimvel v. People*, *supra* note 46; citation omitted.

[49] See *Mabunot v. People*, G.R. No. 204659, September 19, 2016, citing *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 580-581.

[50] See Articles 64 and 76 of the Revised Penal Code.

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