

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE M.A VELOSO, DEFENDANT AND APPELLANT.

G.R. No. 23051. October 20, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding the accused, Jose M.a Veloso, guilty of the crime of resistance of the agents of the authority, in violation of article 252 of the Penal Code, and sentencing him to four months and one day imprisonment, *arresto mayor*, with the accessory penalties, to pay a fine of P200, with the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. The errors assigned by counsel for the accused as appellant, go to the proposition that the resistance of the police was justifiable on account of the illegality of the John Doe search warrant.

In May, 1923, the building located at No. 124 Calle Arzobispo, City of Manila, was used by an organization known as the Parliamentary Club. Jose M.a Veloso was at that time a member of the House of Representatives of the Philippine Legislature. He was also the manager of the club.

The police of Manila had reliable information that the so-called Parliamentary Club was nothing more than a gambling house. Indeed, on May 19, 1923, J. F. Town-Send, the chief of the gambling squad, had been to the club and verified this fact. As a result, on May 25, 1923, Detective Andres Geronimo of the secret service of the City of Manila, applied for, and obtained a search warrant from Judge Garduño of the municipal court. Thus provided, the police attempted to raid the Parliamentary Club a little after three in the afternoon of the date abovementioned. They found the doors to the premises closed and barred. Accordingly, one band of police, including policeman Rosacker, ascended a telephone pole, so as to enter a window of the house. Other policemen, headed by Townsend, broke in the outer door.

Once inside the Parliamentary Club, nearly fifty persons were apprehended by the police. One of them was the defendant Veloso. Veloso asked Townsend what he wanted, and the latter showed him the search warrant. Veloso read it and told Townsend that he was Representative Veloso and not John Doe, and that the police had no right to search the house. Townsend answered that Veloso was considered as John Doe. As Veloso's pocket was bulging, as if it contained gambling utensils, Townsend required Veloso to show him the evidence of the game. About five minutes was consumed in conversation between the policemen and the accused, the policemen insisting on searching Veloso, and Veloso insisting in his refusal to submit to the search.

At last the patience of the officers was exhausted. So policeman Rosacker took hold of Veloso only to meet with his resistance. Veloso bit Rosacker on the right forearm, and gave him a blow in another part of the body, which injured the policeman quite severely. Through the combined efforts of Townsend and Rosacker, Veloso was finally laid down on the floor, and long sheets of paper, or *reglas de monte*, cards, cardboards, and chips were taken from his pockets.

All of the persons arrested were searched and then conducted to the patrol wagons. Veloso again refused to obey

and shouted offensive epithets against the police department. It was necessary for the policemen to conduct him downstairs. At the door, Veloso resisted so tenaciously that three policemen were needed to place him in the patrol wagon.

In the municipal court of the City of Manila, the persons arrested in the raid were accused of gambling. All of them were eventually acquitted in the Court of First Instance for lack of proof, with the sole exception of Veloso, who was found guilty of maintaining a gambling house. This case reached the appellate court where the accused was finally sentenced to pay a fine of P500. (No. 22168.[1])

The foregoing are the principal facts taken mainly from the findings of the trial judge, the Honorable Vicente Nepomuceno. Counsel for the appellant makes no effort to impugn these findings, except that he stresses certain points as more favorable to the case of his client. The defense, as previously indicated, is planted squarely on the contention that since the name of Veloso did not appear in the search warrant, but instead the pseudonym John Doe was used, Veloso had a legal right to resist the police by force. The nature of this defense makes it advisable to set forth further facts, relating particularly to the search warrant, before passing to the law.

There are found in the record the application for search warrant, the affidavit for search warrant, and the search warrant. The application reads:

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

"IN THE MUNICIPAL COURT OF THE CITY OF MANILA

"THE PEOPLE OF THE PHIL-

]

IPPINE ISLANDS, Plaintiff,

]

APPLICATION FOR

]

SEARCH WARRANT

"vs.

]

(G)

]

"JOHN DOE, Defendant.

]

" Testimony taken before Hon. L. Garduño, Judge, Municipal Court, Manila.

"Andres Geronimo, being duly sworn, testifies as follows :

"Q. What is your name, residence and occupation?—A. Andres Geronimo, No. 47 Revellin, detective.

"Q. Are you the applicant of this search warrant?—A. Yes, sir.

"Q. Do you know the premises situated at No. 124 Calle Arzobispo, District of W. C, City of Manila?—A. Yes, sir.

"Q. Do you know who occupies said premises?—A. I do not know. According to the best of my information the house is occupied by John Doe.

"Q. What are your reasons for applying for this search warrant?—A. It has been reported to me by a person whom I consider to be reliable that in said premises there are instruments and devices used in gambling games, such as cards, dice, chips, lottery tickets, lists of drawing and lists used in prohibited games kept. It has been reported to me by a person whom I consider to be reliable that there are or there will be gambling conducted in said premises. The aforesaid premises are known as gambling house. I have watched the foregoing premises and believed it to be a gambling house and a place where instruments and devices used in gambling games, such as cards, dice, chips, lottery tickets, lists of drawing and lists used in prohibited games are kept.

"I, Andres Geronimo, being duly sworn, depose and say that I have read the foregoing questions and answers and that I find the same to be correct and true to the best of my knowledge and belief.

(Sgd.) "ANDRES GERONIMO

"Subscribed and sworn to before me this 25th day of May, 1923.

(Sgd.) "L. GARDUÑO

"Judge, Municipal Court"

The affidavit and the search warrant are so nearly alike that it will suffice to copy the search warrant alone. This document reads:

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

"IN THE MUNICIPAL COURT OF THE CITY OF MANILA

"THE PEOPLE OF THE PHIL-

]

IPPINE ISLANDS, Plaintiff,

]

]

SEARCH WARRANT

"vs.

]

(G)

]

"JOHN DOE, Defendant.

]

"The People of the Philippine Islands, to any member of the "Police Force of the City of Manila.

"GREETING:

"Proof by affidavit having this day been made before me by Andres Geronimo that he has good reason to believe and does believe that John Doe has illegally in his possession in the building occupied by him and which is under his control, namely in the building numbered 124 Calle Arzobispo, City of Manila, Philippine Islands, certain devices and effects used in violation of the Gambling Law, to wit: money, cards, chips, reglas, pintas, tables and chairs and other utensils used in connection with the game commonly known as monte and that the said John Doe keeps and conceals said devices and effects with the illegal and criminal intention of using them in violation of the Gambling Law.

"Now therefore, you are hereby commanded that at any time in the day or night within ten (10) days on or after this date to make a search on the person of said John Doe and in the house situated at No. 124 Calle Arzobispo, City of Manila, Philippine Islands, in quest of the above described devices and effects and if you find the same or any part thereof, you are commanded to bring it forthwith before me as provided for by law.

"Given under my hand, this 25th day of May, 1923.

(Sgd.) "L. GARDUÑO

"Judge, Municipal Court"

Coming now to the legal aspects of the case, it is first worthy of mention that by reason of the Fourth Amendment to the United States Constitution, and the eleventh and eighteenth paragraphs of the Philippine Bill of Rights, as found in the present Organic Act, the security of the dwelling and the person is guaranteed. The organic act provides "that the right to be secured against unreasonable searches and seizures shall not be violated." It further provides "that no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

In the Philippine Code of Criminal Procedure are found provisions of the same import, although naturally entering more into detail. It is therein provided, among other things, that "a search warrant shall not issue except for probable cause and upon application supported by oath particularly describing the place to be searched and the person or thing to be seized." (Section 97.) After the judge or justice shall have examined on oath the complainant and any witnesses he may produce, and shall have taken their depositions in writing (section 98), and after the judge or justice is satisfied of the existence of facts upon which the application is based, or that there is probable cause to believe that they exist, he must issue the warrant, which must be substantially in the following form: " * * * You are, therefore, commanded, * * * to make immediate search on the person of..... or in the house situated..... (describing it or any other place to be searched with reasonable particularity, as the case may be) for the following property: * * *." (Section 99.) It is finally provided that "a person charged with a crime may be searched for dangerous weapons or anything which may be used as proof of the commission of the crime." (Section 105.)

A search warrant must conform strictly to the requirements of the constitutional and statutory provisions under which it is issued. Otherwise, it is void. The proceedings upon search warrants, it has rightly been held, must be absolutely legal, "for there is not a description of process known to the law, the execution of which is more distressing to the citizen. Perhaps there is none which excites such intense feeling in consequence of its humiliating and degrading effect." The warrant will always be construed strictly without, however, going the full length of requiring technical accuracy. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify under it, (24 R. C. L., pp. 711, et seq.; *Reed vs. Rice* [1829], 2 J. J. Marshall [Ky.], 44; 19 Am. Dec., 122; *Smith vs. McDuffee* [1914], 72 Ore., 276; Ann. Cas. 1916 D, 947.)

The search warrant has been likened to a warrant of arrest. Although apprehending that there are material differences between the two, in view of the paucity of authority pertaining to John Doe search warrants, we propose to take into consideration the authorities relied upon by the appellant, thus following the precedent of *Uy Kheytyin vs. Villareal* ([1920], 42 Phil., 886), where the regularity of the issuance of the search warrant was also questioned. In the lower court, and again in this court, the attorneys for the defense quoted from Wharton's Criminal Procedure. In that text at pages 51, 52, 54, 55, and 56 of volume 1 of the Tenth Edition, is found the following:

"Form and Sufficiency of Warrant. Technical accuracy is not required. * * *

* * * * *

"Name and description of the accused should be inserted in the body of the warrant; and where the name is unknown there must be such a description of the person accused as will enable the officer to identify him when found.

* * * * *

"Warrant for apprehension of unnamed party, or containing a wrong name for the party to be apprehended is void, except in those cases where it contains a descriptio personae such as will enable the officer to identify the accused.

* * * * *

" 'John Doe' Warrants. It follows, on principle, from what has already been said regarding the essential requirements of warrants for the apprehension of persons accused, and about blank warrants, that a warrant for the apprehension of a person whose true name is unknown, by the name of 'John Doe' or 'Richard Roe,' 'whose other or true name is unknown,' is void, without other and further descriptions of the person to be apprehended, and such warrant will not justify the officer in acting under it. Such a warrant must, in addition, contain the best descriptio personae possible to be obtained of the person or persons to be apprehended, and this description must be sufficient to indicate clearly the proper person or persons upon whom the warrant is to be served; and should state his personal appearance and peculiarities, give his occupation and place of residence, and any other circumstances by means of which he can be identified.

"Person apprehended in act of committing a crime, under a 'John Doe' warrant, on the other hand, the apprehension will not be illegal, or the officer liable, because under such circumstances it is not necessary that a warrant should have been issued."

The authority most often cited to sustain the text, and quoted with approval by the United States Supreme Court, is the case of *Commonwealth vs. Crotty* ([1865], 10 Allen [Mass.], 403), It there appeared that one Peaslee had made a complaint to the police court of Lee, charging that "John Doe or Richard Roe, whose other or true name m to your complainant unknown," had committed an assault and battery upon him; upon which complaint a warrant was issued against "John Doe or Richard Roe, whose other or true name is to your complainant unknown, named

in the foregoing complaint." Neither the complaint nor the warrant contained any further description or means of identification of the person to be arrested. Crotty resisted the arrest upon the ground that the warrant was invalid. Mr. Chief Justice Bigelow, as the organ of the Supreme Court of Massachusetts, said:

"We cannot entertain a doubt that the warrant on which the officer attempted to arrest one of the defendants at the time of the alleged riot was insufficient, illegal and void. It did not contain the name of the defendant, nor any description or designation by which he could be known and identified as the person against whom it was issued. It was in effect a general warrant, upon which any other individual might as well have been arrested, as being included in the description, as the defendant himself. Such a warrant was contrary to elementary principles, and in direct violation of the constitutional right of the citizen, as set forth in the Declaration of Rights, article 14, which declares that every subject has a right to be secure from all unreasonable searches and seizures of his person, and that all warrants, therefore, are contrary to this right, if the order in the warrant to a civil officer to arrest one or more suspected persons or to seize their property be not accompanied with a special designation of the persons or objects of search, arrest or seizure. This is in fact only a declaration of an ancient common law right. It was always necessary to express the name or give some description of a party to be arrested on a warrant; and if one was granted with the name in blank, and without other designation of the person to be arrested, it was void. (1 Hale P, G. 577. 2 Ib. 119. Foster, 312. 7 Dane Ab. 248. 1 Chit. Crim. Law, 39. Mead vs. Haws, 7 Cow., 332, and cases cited.)

"This rule or principle does not prevent the issue and service of a warrant against a party whose name is unknown. In such case the best description possible of the person to be arrested is to be given in the warrant; but it must be sufficient to indicate clearly on whom it is to be served, by stating his occupation, his personal appearance and peculiarities, the place of his residence, or other circumstances by which he can be identified. (1 Chit. Crim. Law, 39, 40.)

"The warrant being defective and void on its face, the officer had no right to arrest the person on whom he attempted to serve it. He acted without warrant and was a trespasser. The defendant whom he sought to arrest had a right to resist by force, using no more than was necessary to resist the unlawful acts of the officer * * *

"The defendants, therefore, in resisting the officer in making an arrest under the warrant in question, if they were guilty of no improper or excessive force or violence, did not do an unlawful act by lawful means, or a lawful act by unlawful means, and so could not be convicted of the misdemeanor of a riot, with which they are charged in the indictment."

Appellant's argument, as based on these authorities, runs something like this. The law, constitutional and statutory, requires that the search warrant shall not issue unless the application "particularly" describe the person to be seized. A failure thus to name the person is fatal to the validity of the search warrant. To justify search and arrest, the process must be legal. Illegal official action may be forcibly resisted.

For the prosecution, however, as the arguments are advanced by the Attorney-General, and as the law was summarized by the trial judge, there is much to be said. Careful and logical rejection brings forth certain points of paramount force and exercising a decisive influence. We will now make mention of them by correlating the facts and the law.

In the first place, the affidavit for the search warrant and the search warrant itself described the building to be searched as "the building No. 124 Calle Arzobispo, City of Manila, Philippine Islands." This, without doubt, was a sufficient designation of the premises to be searched. It is the prevailing rule that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended. (Steele vs. U. S. [1925], U. S. Supreme Court Advance Opinions 1924-1925; 69 Law. ed., 757). The police officers were accordingly authorized to break down the door and enter the premises of the building occupied by the so-called Parliamentary Club. When inside, they then had the right to arrest the persons

presumably engaged in a prohibited game, and to confiscate the evidence of the commission of the crime. It has been held that an officer making an arrest may take from the person arrested any money or property found upon his person, which was used in the commission of the crime or was the fruit of the crime, or which may furnish the person arrested with the means of committing violence or of escaping, or which may be used as evidence on the trial of the cause, but not otherwise. (*Moreno vs. Ago Chi* [1909], 12 Phil., 439.)

Proceeding along a different line of approach, it is undeniable that the application for the search warrant, the affidavit, and the search warrant failed to name Jose M.a Veloso as the person to be seized. But the affidavit and the search warrant did state that "John Doe has illegally in his possession in the building occupied by him, and which is under his control, namely, in the building numbered 124 Calle Arzobispo, City of Manila, Philippine Islands, certain devices and effects used in violation of the Gambling Law." Now, in this connection, it must not be forgotten that the Organic Act requires a particular description of the place to be searched, and the person or things to be seized, and that the warrant in this case sufficiently described the place and the gambling apparatus, and, in addition, contained a description of the person to be seized. Under the authorities cited by the appellant, it is invariably recognized that the warrant for the apprehension of an unnamed party is void, "except in those cases where it contains a descriptio personae such as will enable the officer to identify the accused." The description must be sufficient to indicate clearly the proper person upon whom the warrant is to be served. As the search warrant stated that John Doe had gambling apparatus in his possession in the building occupied by him at No. 124 Calle Arzobispo, City of Manila, and as this John Doe was Jose M.a Veloso, the manager of the club, the police could identify John Doe as Jose M.a Veloso without difficulty.

Again, it must be remembered that No. 124 Calle Arzobispo was supposed to be used for club purposes. It was not the home of Veloso; not the place of abode of the family, which the law carefully protects in all of its sanctity. It was a club partially public in nature. It was, moreover, a camouflaged club with a high sounding name calculated to mislead the police, but intended for nefarious practices. In a club of such a character, unlike in the home, there would commonly be a varying occupancy, a number of John Does and Richard Roes whose names would be unknown to the police.

It is also borne out by the authorities that, in defense of himself, any member of his family or his dwelling, a man has a right to employ all necessary violence. But even in the home, and much less so in a club or public place, the person sought to be arrested or to be searched should use no more force than is necessary to repel the unlawful act of the officers. To authorize resistance to the agents of the authority, the illegality of the invasion must be clearly manifest. Here, there was possibly a proper case for protest. There was no case for excessive violence to enforce the defendant's idea of a debatable legal question. (*Commonwealth vs. Crotty*, supra; *People vs. Chan Fook* [1921], 42 Phil, 230; 3 *Groizard*, *Codigo Penal*, pp. 456, 457.)

The trial judge deduced from the search warrant that the accused Veloso was sufficiently identified therein. Mention was made by his Honor of the code provision relating to a complaint or information, permitting a fictitious name to be inserted in the complaint or information, in lieu of the true name. The Attorney-General adds to this the argument that the police were authorized to arrest without a warrant since a crime was being committed. We find it unnecessary to comment on this contention.

John Doe search warrants should be the exception and not the rule. The police should particularly describe the place to be searched and the person or things to be seized, wherever and whenever it is feasible. The police should not be hindered in the performance of their duties, which are difficult enough of performance under the best of conditions, by superficial adherence to technicality or far fetched judicial interference.

We agree with the trial judge and with the Attorney-General in their conclusions to the effect that the search

warrant was valid, and that the defendant has been proved guilty beyond a reasonable doubt, of the crime of resistance of the agents of the authority.

The information alleges that at the time of the commission of the crime, the accused was a member of the House of Representatives. The trial court was led to consider this allegation in relation with the facts as an aggravating circumstance, and to sentence the accused accordingly. We doubt, however, that advantage was taken by the offender of his public position when he resisted the officers of the law. The offender did not necessarily make use of the prestige of his office as a means to commit a crime. Undoubtedly, Jose M.a Veloso, as Juan de la Cruz, would have resisted the police just as stoutly, as the Honorable Jose M.a Veloso did. The penalty, accordingly, falls within the medium of that provided by the Penal Code.

Finding present no reversible error, agreeing in all respects with the findings of fact as made by the trial judge, and concurring with the trial judge in his legal conclusions, with one exception, it results that the judgment appealed from must be, as it is hereby, affirmed, with the sole modification that the defendant and appellant shall be sentenced to two months and one day imprisonment, arresto mayor, with the costs of this instance against him. Let the corresponding order to carry this judgment into effect issue.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Villa-Real, J., did not take part.

[1]Promulgated October 17, 1924, not reported.

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