

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN BURGOS Y TITO, DEFENDANT-APPELLANT.

G.R. No. 68955. September 04, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Davao del Sur, 11th Judicial Region, Digos, Davao del Sur convicting defendant-appellant Ruben Burgos y Tito of the crime of Illegal Possession of Firearms in Furtherance of Subversion. The dispositive portion of the decision reads:

"WHEREFORE, finding the guilt of accused Ruben Burgos sufficiently established beyond reasonable doubt, of the offense charged, pursuant to Presidential Decree No. 9, in relation to General Order No. 6, dated September 22, 1972, and General Order No. 7, dated September 23, 1972, in relation further to Presidential Decree No. 885, and considering that the firearm subject of this case was not used in the circumstances as embraced in paragraph 1 thereof, applying the provision of indeterminate sentence law, accused Ruben Burgos is hereby sentenced to suffer an imprisonment of twenty (20) years of reclusion temporal maximum, as minimum penalty, to reclusion perpetua, as maximum penalty, pursuant to subparagraph B, of Presidential Decree No. 9, as aforementioned, with accessory penalties, as provided for by law.

"As a result of this judgment, the subject firearm involved in this case (Homemade revolver, caliber .38, Smith and Wesson, with Serial No. 8.69221) is hereby ordered confiscated in favor of the government, to be disposed of in accordance with law. Likewise, the subversive documents, leaflets and/or propaganda seized are ordered disposed of in accordance with law."

The information charged the defendant-appellant with the crime of illegal possession of firearm in furtherance of subversion in an information which reads as follows:

"That in the afternoon of May 13, 1982 and thereabout at Tiguman, Digos, Davao del Sur, Philippines, within the jurisdiction of this Court, the above-named accused with intent to possess and without the necessary license, permit or authority issued by the proper government agencies, did then and there wilfully, unlawfully and feloniously keep, possess, carry and have in his possession, control and custody one (1) homemade revolver, caliber .38, make Smith and Wesson, with Serial No. 8.69221, which firearm was issued to and used by the accused at Tiguman, Digos, Davao del Sur, his area of operations by one Alias Commander Pol for the New People's Army (NPA), a subversive organization organized for the purpose of overthrowing the Government of the Republic of the Philippines through lawless and violent means, of which the accused had knowledge, and which firearm was used by the accused in the performance of his subversive tasks such as the recruitment of New Members to the NPA and collection of contributions from the members.

"CONTRARY TO LAW."

The evidence for the prosecution is summarized in the decision of the lower court as follows:

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"x x x Through the testimony of Pat. Pepito Bioco, and Sgt. Romeo Taroy, it appears that by virtue of an intelligent information obtained by the Constabulary and INP units, stationed at Digos, Davao del Sur, on May 12, 1982, one Cesar Masamlok personally and voluntarily surrendered to the authorities at about 9:00 o'clock A.M. at Digos, Davao del Sur Constabulary Headquarters, stating that he was forcibly recruited by accused Ruben Burgos as member of the NPA, threatening him with the use of firearm against his life, if he refused.

"Along with his recruitment, accused was asked to contribute one (1) chop of rice and one peso (P1.00) per month, as his contribution to the NPA (TSN, page 5, Hearing-October 14, 1982).

"Immediately, upon receipt of said information, a joint team of PC-INP units, composed of fifteen (15) members, headed by Captain Melchesideck Bargo, (PC), on the following day, May 13, 1982, was dispatched at Tiguman, Davao del Sur, to arrest accused Ruben Burgos. The team left the headquarter at 1:30 P.M., and arrived at Tiguman, at more or less 2:00 o'clock P.M., where through the help of Pedro Burgos, brother of accused, the team was able to locate accused, who was plowing his field. (TSN, pages 6-7, Hearing-October 14, 1982).

"Right in the house of accused, the latter was called by the team and Pat. Bioco asked accused about his firearm, as reported by Cesar Masamlok. At first accused denied possession of said firearm but later, upon question profounded by Sgt. Alejandro Buncalan with the wife of the accused, the latter pointed to a place below their house where a gun was buried in the ground. (TSN, page 8, Hearing-October 14, 1982).

"Pat. Bioco then verified the place pointed by accused's wife and dug the grounds, after which he recovered the firearm, Caliber .38 revolver, marked as Exhibit "A" for the prosecution.

"After the recovery of the firearm, accused likewise pointed to the team, subversive documents which he allegedly kept in a stock pile of cogon, at a distance of three (3) meters apart from his house. Then Sgt. Taroy accordingly verified beneath said cogon grass and likewise recovered documents consisting of notebook colored maroon with spiral bound, Exhibit "B" for the prosecution; a pamphlet consisting of eight (8) leaves, including the front and back covers entitled Ang Bayan, Pahayagan ng Partido Komunista ng Pilipinas, Pinapatnubayan ng Marxismo, Leninismo, Kaisipang Mao Zedong, dated December 31, 1980, marked as Exhibit "C", and another pamphlet Asdang Pamantalaang Masa sa Habagatang Mindanao, March and April 1981 issue, consisting of ten (10) pages, marked as Exhibit "D" for the prosecution.

"Accused, when confronted with the firearm, Exhibit "A", after its recovery, readily admitted the same as issued to him by Nestor Jimenez, otherwise known as a certain Alias Pedipol, allegedly team leader of the sparrow unit of New People's Army, responsible in the liquidation of target personalities, opposed to NPA ideological movement, an example was the killing of the late Mayor Llanos and Barangay Captain of Tienda Aplaya, Digos, Davao del Sur. (TSN, pages 1-16, Hearing-October 14, 1982).

"To prove accused's subversive activities, Cesar Masamlok, a former NPA convert was presented, who declared that on March 7, 1982, in his former residence at Tiguman, Digos, Davao del Sur, accused Ruben Burgos, accompanied by his companions Landrino Burgos, Oscar Gomez and Antonio Burgos, went to his house at about 5:00 o'clock P.M. and called him downstairs. Thereupon, accused told Masamlok, their purpose was to ask rice and one (1) peso from him, as his contribution to their companions, the NPA of which he is now a member. (TSN, pages 70, 71, 72, Hearing-January 4, 1983).

"Accused and his companions told Masamlok, he has to join their group otherwise, he and his family will be killed. He was also warned not to reveal anything with the government authorities. Because of the threat to his life and family, Cesar Masamlok joined the group. Accused then told him, he should attend a seminar scheduled on April 19, 1982. Along with this invitation, accused pulled out from his waistline a .38 caliber revolver which Masamlok really saw, being only about two (2) meters away from accused, which make him easily identified said firearm, as that marked as Exhibit "A" for the prosecution. (TSN, pages 72, 73, and 74, Hearing-January 4, 1983).

"On April 19, 1982, as previously invited, Masamlok, accompanied by his father, Matuguil Masamlok, Isabel Ilan and Ayok Ides went to the house of accused and attended the seminar. Those present in the seminar were: accused Ruben Burgos, Antonio Burgos, Oscar Gomez, Landrino Burgos, alias Pedipol and one alias Jamper.

"The first speaker was accused Ruben Burgos, who said very distinctly that he is an NPA together with his companions, to assure the unity of the civilian. That he encouraged the group to overthrow the government, emphasizing that those who attended the seminar were already members of the NPA, and if they reveal to the authorities, they will be killed.

"Accused, while talking, showed to the audience pamphlets and documents, then finally shouted, the NPA will be victorious. Masamlok likewise identified the pamphlets as those marked as Exhibits "B", "C", and "D" for the prosecution. (TSN, pages 75, 76 and 77, Hearing-January 4, 1983)

"Other speakers in said meeting were Pedipol, Jamper and Oscar Gomez, who likewise expounded their own opinions about the NPA. It was also announced in said seminar that a certain Tonio Burgos, will be responsible for the collection of the contribution from the members. (TSN, pages 78-79, Hearing-January 4, 1983)

"On May 12, 1982, however, Cesar Masamlok surrendered to Captain Bargio of the Provincial Headquarters of the Philippine Constabulary, Digos, Davao del Sur.

"Assistant Provincial Fiscal Panfilo Lovitos was presented to prove that on May 19, 1982, he administered the subscription of the extra-judicial confession of accused Ruben Burgos, marked as Exhibit "E" for the prosecution, consisting of five (5) pages.

"Appearing voluntarily in said office, for the subscription of his confession, Fiscal Lovitos, realizing that accused was not represented by counsel, requested the services of Atty. Anyog, whose office is adjacent to the Fiscal's Office, to assist accused in the subscription of his extra-judicial statement.

"Atty. Anyog assisted accused in the reading of his confession from English to Visayan language, resulting to the deletion of question No. 19 of the document, by an inserted certification of Atty. Anyog and signature of accused, indicating his having understood, the allegations of his extra-judicial statement.

"Fiscal Lovitos, before accused signed his statement, explained to him his constitutional rights to remain silent, right to counsel and right to answer any question propounded or not.

"With the aid of Atty. Anyog, accused signed his confession in the presence of Atty. Anyog and Fiscal Lovitos, without the presence of military authorities, who escorted the accused, but were sent outside the cubicle of Fiscal Lovitos, while waiting for the accused. (TSN, pages 36-40, Hearing-November 15, 1982)

"Finally, in order to prove illegal possession by accused of the subject firearm, Sgt. Epifanio Comabig, in-charge of firearms and explosives, NCO, Headquarter, Philippine Constabulary, Digos, Davao del Sur, was presented and testified, that among the lists of firearm holders in Davao del Sur, nothing was listed in the name of accused Ruben Burgos, neither was his name included among the lists of persons who applied for the licensing of the firearm, under Presidential Decree No. 1745.

"After the above-testimony the prosecution formally closed its case and offered its exhibits, which were all admitted in evidence, despite objection interposed by counsel for accused, which was accordingly overruled."

On the other hand, the defendant-appellant's version of the case against him is stated in the decision as follows:

"From his farm, the military personnel, whom he said he cannot recognize, brought him to the PC Barracks at Digos, Davao del Sur, and arrived there at about 3:00 o'clock, on the same date. At about 8:00 o'clock P.M., in the evening, he was investigated by soldiers, whom he cannot identify because they were wearing a civilian attire. (TSN, page 141, Hearing-June 15, 1983)

"The investigation was conducted in the PC barracks, where he was detained with respect to the subject firearm, which the investigator, wished him to admit but accused denied its ownership. Because of his refusal, accused was mauled, hitting him on the left and right side of his body which rendered him unconscious. Accused in an atmosphere of tersed solemnity, crying and with emotional attachment, described in detail how he was tortured and the ordeals he was subjected.

"He said, after recovery of his consciousness, he was again confronted with subject firearm, Exhibit "A", for him to admit and when he repeatedly refused to accept as his own firearm, he was subjected to further prolong (sic) torture and physical agony. Accused said, his eyes were covered with wet black cloth with pungent effect on his eyes. He was undressed, with only blindfold, pungent water poured in his body and over his private parts, making his entire body, particularly his penis and testicle, terribly irritating with pungent pain.

"All along, he was investigated to obtain his admission. The process of beating, mauling, pain and/or ordeal was repeatedly done in similar cycle, from May 13 and 14, 1982, intercepted only whenever he fell unconscious and again repeated after recovery of his senses.

"Finally on May 15, 1982, after undergoing the same torture and physical ordeal, he was seriously warned, if he will still adamantly refuse to accept ownership of the subject firearm, he will be salvaged, and no longer able to bear any further the pain and agony, accused admitted ownership of subject firearm.

"After his admission, the mauling and torture stopped, but accused was made to sign his affidavit marked as Exhibit "E" for the prosecution, consisting of five (5) pages, including the certification of the administering officer. (TSN, pages 141-148, Hearing-June 15, 1983).

"In addition to how he described the torture inflicted on him, accused, by way of explanation and commentary in details, and going one by one, the allegations and/or contents of his alleged extra-judicial statement, attributed his answers to those questions involuntarily made only because of fear, threat and intimidation of his person and family, as a result of unbearable excruciating pain he was subjected by an investigator, who, unfortunately he cannot identify and was able to obtain his admission of the subject firearm, by force and violence exerted over his person.

"To support denial of accused of being involved in any subversive activities, and also to support his denial to the truth of his alleged extra-judicial confession, particularly questions Nos. 35, 38, 41, 42, 43, 44, 45, 46 and 47, along with his answers to those questions, involving Honorata Arellano alias Inday Arellano, said Honorata Arellano appeared and declared categorically, that the above-questions embraced in the numbers allegedly stated in the extra-judicial confession of accused, involving her to such NPA personalities, as Jamper, Pol, Anthony, etc., were not true because on the date referred on April 28, 1982, none of the persons mentioned came to her house for treatment, neither did she meet the accused nor able to talk with him. (TSN, pages 118-121, Hearing-May 18, 1983).

"She, however, admitted being familiar with one Oscar Gomez, and that she was personally charged with subversion in the Office of the Provincial Commander, Philippine Constabulary, Digos, Davao del Sur, but said charge was dismissed without reaching the Court. She likewise stated that her son, Rogelio Arellano, was likewise charged for subversion filed in the Municipal Trial Court of Digos, Davao del Sur, but was likewise dismissed for lack of sufficient evidence to sustain his conviction. (TSN, pages 121-122, in relation to her cross-examination, Hearing-May 18, 1983).

"To support accused's denial of the charge against him, Barangay Captain of Tiguman, Digos, Davao del Sur, Salvador Galaraga was presented, who declared, he was not personally aware of any subversive activities of accused, being his neighbor and member of his barrio. On the contrary, he can personally attest to his good character and reputation, as a law abiding citizen of his barrio, being a carpenter and farmer thereat. (TSN, pages 128-129, Hearing-May 18, 1983).

"He, however, admitted in cross-examination, that there were a lot of arrests made by the authorities in his barrio involving subversive activities but they were released and were not formally charged in Court because they publicly took their oath of allegiance with the government. (TSN, pages 133-134, in relation to page 136, Hearing-May 18, 1983).

"Finally, to support accused's denial of the subject firearm, his wife, Urbana Burgos, was presented and who testified that the subject firearm was left in their house by Cesar Masamlok and one Pedipol on May 10, 1982. It was night time, when the two left the gun, alleging that it was not in order, and that they will leave it behind, temporarily, for them to claim it later. They were the ones who buried it. She said, her husband, the accused, was not in their house at that time and that she did not inform him about said firearm neither did she report the matter to the authorities, for fear of the life of her husband. (TSN, page 24, November 22, 1983).

"On cross-examination, she said, even if Masamlok during the recovery of the firearm, was wearing a mask, she can still identify him. (TSN, page 6, Hearing-November 22, 1983).

"After the above-testimony, accused through counsel formally rested his case, in support of accused's through counsel manifestation for the demurrer to evidence of the prosecution, or in the alternative for violation merely of simple illegal possession of firearm, under the Revised Administrative Code, as amended by Republic Act No. 4, reflected in the manifestation of counsel for accused. (TSN, pages 113-114, Hearing-May 18, 1983)"

Accused-appellant Ruben Burgos now raises the following assignments of error, to wit:

I -

THE TRIAL COURT ERRED IN HOLDING THAT (SIC) THE ARREST OF ACCUSED-APPELLANT WITHOUT VALID WARRANT TO BE LAWFUL.

II -

THE TRIAL COURT ERRED IN HOLDING THE SEARCH IN THE HOUSE OF ACCUSED-APPELLANT FOR FIREARM WITHOUT VALID WARRANT TO BE LAWFUL.

III -

THE TRIAL COURT ERRED IN HOLDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF P.D. NO. 9 IN RELATION TO GENERAL ORDERS NOS. 6 AND 7.

Was the arrest of Ruben Burgos lawful? Were the search of his house and the subsequent confiscation of a firearm and documents allegedly found therein conducted in a lawful and valid manner? Does the evidence sustaining the crime charged meet the test of proving guilt beyond reasonable doubt?

The records of the case disclose that when the police authorities went to the house of Ruben Burgos for the purpose of arresting him upon information given by Cesar Masamlok that the accused allegedly recruited him to join the New People's Army (NPA), they did not have any warrant of arrest or search warrant with them (TSN, p. 25, October 14, 1982; and TSN, p. 61, November 15, 1982).

Article IV, Section 3 of the Constitution provides:

"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 not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, 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."

The constitutional provision is a safeguard against wanton and unreasonable invasion of the privacy and liberty of a citizen as to his person, papers and effects. This Court explained in *Villanueva v. Querubin* (48 SCRA 345) why this right is so important:

"It is deference to one's personality that lies at the core of this right, but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily thereto confined. (Cf. *Hoffa v. United States*, 385 US 293 [1966]) What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. (Cf. *Schmerber v. California*, 384 US 757 [1966], *Brennan, J.* and *Boyd v. United States*, 116 US 616, 630 [1886]). In the same vein, *Landynski* in his authoritative work (*Search and Seizure and the Supreme Court* [1966]), could fitly characterize this constitutional right as the embodiment of a 'spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.' (Ibid, p. 47)."

The trial court justified the arrest of the accused-appellant without any warrant as falling under one of the instances when arrests may be validly made without a warrant. Rule 113, Section 6**of the Rules of Court, provides the exceptions as follows:

a)

When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;

b)

When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;

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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The Court stated that even if there was no warrant for the arrest of Burgos, the fact that "the authorities received an urgent report of accused's involvement in subversive activities from a reliable source (report of Cesar Masamlok) the circumstances of his arrest, even without judicial warrant, is lawfully within the ambit of Section 6-A of Rule 113 of the Rules of Court and applicable jurisprudence on the matter."

If the arrest is valid, the consequent search and seizure of the firearm and the alleged subversive documents would become an incident to a lawful arrest as provided by Rule 126, Section 12, which states:

"A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense."

The conclusions reached by the trial court are erroneous.

Under Section 6(a) of Rule 113, the officer arresting a person who has just committed, is committing, or is about

to commit an offense must have personal knowledge of that fact. The offense must also be committed in his presence or within his view. (*Sayo v. Chief of Police*, 80 Phil. 859).

There is no such personal knowledge in this case. Whatever knowledge was possessed by the arresting officers, it came in its entirety from the information furnished by Cesar Masamlok. The location of the firearm was given by the appellant's wife.

At the time of the appellant's arrest, he was not in actual possession of any firearm or subversive document. Neither was he committing any act which could be described as subversive. He was, in fact, plowing his field at the time of the arrest.

The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.

The Solicitor General is of the persuasion that the arrest may still be considered lawful under Section 6(b) using the test of reasonableness. He submits that the information given by Cesar Masamlok was sufficient to induce a reasonable ground that a crime has been committed and that the accused is probably guilty thereof.

In arrests without a warrant under Section 6(b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator.

In this case, the accused was arrested on the sole basis of Masamlok's verbal report. Masamlok led the authorities to suspect that the accused had committed a crime. They were still fishing for evidence of a crime not yet ascertained. The subsequent recovery of the subject firearm on the basis of information from the lips of a frightened wife cannot make the arrest lawful. If an arrest without warrant is unlawful at the moment it is made, generally nothing that happened or is discovered afterwards can make it lawful. The fruit of a poisoned tree is necessarily also tainted.

More important, we find no compelling reason for the haste with which the arresting officers sought to arrest the accused. We fail to see why they failed to first go through the process of obtaining a warrant of arrest, if indeed they had reasonable ground to believe that the accused had truly committed a crime. There is no showing that there was a real apprehension that the accused was on the verge of flight or escape. Likewise, there is no showing that the whereabouts of the accused were unknown.

The basis for the action taken by the arresting officer was the verbal report made by Masamlok who was not required to subscribe his allegations under oath. There was no compulsion for him to state truthfully his charges under pain of criminal prosecution. (TSN, p. 24, October 14, 1982). Consequently, the need to go through the process of securing a search warrant and a warrant of arrest becomes even more clear. The arrest of the accused while he was plowing his field is illegal. The arrest being unlawful, the search and seizure which transpired afterwards could not likewise be deemed legal as being mere incidents to a valid arrest.

Neither can it be presumed that there was a waiver, or that consent was given by the accused to be searched simply because he failed to object. To constitute a waiver, it must appear first that the right exists; secondly, that

the person involved had knowledge, actual or constructive, of the existence of such a right; and lastly, that said person had an actual intention to relinquish the right (*Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (*Magoncia v. Palacio*, 80 Phil 770). As pointed out by Justice Laurel in the case of *Pasion Vda. de Garcia v. Locsin* (*supra*):

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"x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. (56 C.J., pp.1180, 1181)."

We apply the rule that: "courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights." (*Johnson v. Zerbst*, 304 U.S. 458).

That the accused-appellant was not apprised of any of his constitutional rights at the time of his arrest is evident from the records:

ATTY. CALAMBA:

"Q

When you went to the area to arrest Ruben Burgos, you were not armed with an arrest warrant?

"A

None Sir.

"Q

Neither were you armed with a search warrant?

"A

No Sir.

"Q

As a matter of fact, Burgos was not present in his house when you went there?

"A

But he was twenty meters away from his house.

"Q

Ruben Burgos was then plowing his field?

"A

Yes Sir.

"Q

When you called for Ruben Burgos you interviewed him?

"A

Yes Sir.

"Q

And that you told him that Masamlok implicated him?

"A

No Sir.

"Q

What did you tell him?

"A

That we received information that you have a firearm, you surrender that firearm, first he denied but when Sgt. Buncalan interviewed his wife, his wife told him that it is buried, I dug the firearm which was wrapped with a cellophane.

"Q

In your interview of Burgos you did not remind him of his rights under the constitution considering that he was purposely under arrest?

"A

I did not.

"Q

As a matter of fact, he denied that he has ever a gun?

"A

Yes Sir.

"Q

As a matter of fact, the gun was not in his possession?

"A

It was buried down in his house.

"Q

As a matter of fact, Burgos did not point to where it was buried?

"A

Yes Sir." (TSN, pp. 25-26, Hearing-October 14, 1982)

Considering that the questioned firearm and the alleged subversive documents were obtained in violation of the accused's constitutional rights against unreasonable searches and seizures, it follows that they are inadmissible as evidence.

There is another aspect of this case.

In proving ownership of the questioned firearm and alleged subversive documents, the prosecution presented the two arresting officers who testified that the accused readily admitted ownership of the gun after his wife pointed to the place where it was buried. The officers stated that it was the accused himself who voluntarily pointed to the place where the alleged subversive documents were hidden.

Assuming this to be true, it should be recalled that the accused was never informed of his constitutional rights at the time of his arrest. So that when the accused allegedly admitted ownership of the gun and pointed to the location of the subversive documents after questioning, the admissions were obtained in violation of the constitutional right against self-incrimination under Sec. 20 of Art. IV of the Bill of Rights which provides:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right.
x x x."

The Constitution itself mandates that any evidence obtained in violation of this right is inadmissible in evidence. Consequently, the testimonies of the arresting officers as to the admissions made by the appellant cannot be used against him.

The trial court validly rejected the extra-judicial confession of the accused as inadmissible in evidence. The court stated that the appellant's having been exhaustively subjected to physical terror, violence, and third degree measures may not have been supported by reliable evidence but the failure to present the investigator who conducted the investigation gives rise to the "provocative presumption" that indeed torture and physical violence may have been committed as stated.

The accused-appellant was not accorded his constitutional right to be assisted by counsel during the custodial interrogation. The lower court correctly pointed out that the securing of counsel, Atty. Anyog, to help the accused when he subscribed under oath to his statement at the Fiscal's Office was too late. It could have no palliative effect. It cannot cure the absence of counsel at the time of the custodial investigation when the extrajudicial statement was being taken.

With the extra-judicial confession, the firearm, and the alleged subversive documents inadmissible in evidence against the accused-appellant, the only remaining proof to sustain the charge of Illegal Possession of Firearm in Furtherance of Subversion is the testimony of Cesar Masamlok.

We find the testimony of Masamlok inadequate to convict Burgos beyond reasonable doubt. It is true that the trial court found Masamlok's testimony credible and convincing. However, we are not necessarily bound by the credibility which the trial court attaches to a particular witness. As stated in *People v. Cabrera* (100 SCRA 424):

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"x x x Time and again we have stated that when it comes to question of credibility the findings of the trial court are entitled to great respect upon appeal for the obvious reason that it was able to observe the demeanor, actuations and deportment of the witnesses during the trial. But we have also said that this rule is not absolute for otherwise there would be no reversals of convictions upon appeal. We must reject the findings of the trial court where the record discloses circumstances of weight and substance which were not properly appreciated by the trial court."

The situation under which Cesar Masamlok testified is analogous to that found in *People v. Capadocia* (17 SCRA 981):

"The case against appellant is built on Ternura's testimony, and the issue hinges on how much credence can be accorded to him. The first consideration is that said testimony stands uncorroborated. Ternura was the only witness who testified on the mimeographing incident. x x x.

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"x x x He was a confessed Huk under detention at the time. He knew his fate depended upon how much he cooperated with the authorities, who were then engaged in a vigorous anti-dissident campaign. As in the case of Rodrigo de Jesus, whose testimony We discounted for the same reason, that of Ternura cannot be considered as proceeding from a totally unbiased source. x x x."

In the instant case, Masamlok's testimony was totally uncorroborated. Considering that Masamlok surrendered to the military, certainly his fate depended on how eagerly he cooperated with the authorities. Otherwise, he would also be charged with subversion. The trade-off appears to be his membership in the Civil Home Defense Force. (TSN, p. 83, January 4, 1983). Masamlok may be considered as an interested witness. It can not be said that his testimony is free from the opportunity and temptation to be exaggerated and even fabricated for it was intended to secure his freedom.

Despite the fact that there were other persons present during the alleged NPA seminar of April 19, 1982 i.e., Masamlok's father Matuguil Masamlok, Isabel Ilan and Ayok Ides (TSN, p. 74, January 4, 1983) who could have corroborated Cesar Masamlok's testimony that the accused used the gun in furtherance of subversive activities or actually engaged in subversive acts, the prosecution never presented any other witness.

This Court is, therefore, constrained to rule that the evidence presented by the prosecution is insufficient to prove the guilt of the accused beyond reasonable doubt.

As held in the case of *People v. Bania* (34 SCRA 347):

"It is evident that once again, reliance can be placed on *People v. Dramayo* (42 SCRA 59), where after stressing that accusation is not, according to the fundamental law, synonymous with guilt, it was made clear: 'Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.' (Ibid, 64. Cf. *People v. Alvarez*, 55 SCRA 81; *People v. Joven*, 64 SCRA 126; *People v.*

Ramirez, 69 SCRA 144; People v. Godoy, 72 SCRA 69; People v. Lopez, 74 SCRA 205; People v. Poblador, 76 SCRA 634; People v. Quiazon, 78 SCRA 513; People v. Nazareno, 80 SCRA 484; People v. Gabilan, 115 SCRA 1; People v. Gabiana, 117 SCRA 260; and People v. Ibanga, 124 SCRA 697)."

We are aware of the serious problems faced by the military in Davao del Sur where there appears to be a well-organized plan to overthrow the Government through armed struggle and replace it with an alien system based on a foreign ideology. The open defiance against duly constituted authorities has resulted in unfortunate levels of violence and human suffering publicized all over the country and abroad. Even as we reiterate the need for all freedom loving citizens to assist the military authorities in their legitimate efforts to maintain peace and national security, we must also remember the dictum in *Morales v. Enrile* (121 SCRA 538, 569) when this Court stated:

"While the government should continue to repel the communists, the subversives, the rebels, and the lawless with all the means at its command, it should always be remembered that whatever action is taken must always be within the framework of our Constitution and our laws."

Violations of human rights do not help in overcoming a rebellion. A cavalier attitude towards constitutional liberties and protections will only fan the increase of subversive activities instead of containing and suppressing them.

WHEREFORE, the judgment of conviction rendered by the trial court is REVERSED and SET ASIDE. The accused-appellant is hereby ACQUITTED, on grounds of reasonable doubt, of the crime with which he has been charged.

The subject firearm involved in this case (homemade revolver, caliber .38, Smith and Wesson, with Serial No. 8.69221) and the alleged subversive documents are ordered disposed of in accordance with law.

Cost de oficio.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

** The 1985 Rules on Criminal Procedure have made clear-er the exceptions when an arrest may be made without warrant. Rule 113, Section 5 provides:

"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 in fact just been committed, and he has personal knowledge of facts indicating 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 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) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112,

Section 7. (6a, 17a).

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