

CYNTHIA D. NOLASCO, MILA AGUILAR-ROQUE AND WILLIE C. TOLENTINO, PETITIONERS, VS. HON. ERNANI CRUZ PAÑO, EXECUTIVE JUDGE, REGIONAL TRIAL COURT OF QUEZON CITY; HON. ANTONIO P. SAN...

G.R. No. 69803. January 30, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For resolution are petitioners' and public respondents' respective Motions for Partial Reconsideration of this Court's Decision of October 8, 1985, which decreed that:

"WHEREFORE, while Search Warrant No. 80-84 issued on August 6, 1984 by respondent Executive Judge Ernani Cruz Paño is hereby annulled and set aside, and the Temporary Restraining Order enjoining respondents from introducing evidence obtained pursuant to the Search Warrant in the Subversive Documents Case hereby made permanent, the personalties seized may be retained by the Constabulary Security Group for possible introduction as evidence in Criminal Case No. SMC-1-1, pending before Special Military Commission No. 1, without prejudice to petitioner Mila Aguilar-Roque objecting to their relevance and asking said Commission to return to her any and all irrelevant documents and articles." (Rollo, p. 154; 139 SCRA 165).

In their Motion for Partial Reconsideration public respondents maintain that the subject Search Warrant meets the standards for validity and that it should be considered in the context of the criminal offense of Rebellion for which the Warrant was issued, the documents to establish which are less susceptible of particularization since the offense does not involve an isolated act or transaction.

In their own Motion for Partial Reconsideration, petitioners assail that portion of the Decision holding that, in so far as petitioner Mila Aguilar-Roque is concerned, the search made in her premises was incident to her arrest and could be made without a search warrant. Petitioners submit that a warrantless search can be justified only if it is an incident to a lawful arrest and that since Mila Aguilar was not lawfully arrested a search without warrant could not be made.

On April 10, 1986, we required the parties to MOVE in the premises considering the supervening events, including the change of administration that have transpired, and pursuant to the provisions of Section 18 of Rule 3 in so far as the public respondents are concerned (which requires the successor official to state whether or not he maintains the action and position taken by his predecessor-in-office).

In their Compliance, petitioners maintain that the arrest of petitioners and the search of their premises thereafter are both illegal and that the personalties seized should be ordered returned to their owners.

The Solicitor General, on behalf of public respondents, "in deference to the dissenting opinion of then Supreme Court Justice (now Chief Justice) Claudio Teehankee," now offer no further objection to a declaration that the subject search is illegal and to the return of the seized items to the petitioners. Respondents state, however, that

they cannot agree to having the arrest of petitioners declared illegal.

The pertinent portion of the dissenting opinion referred to reads:

"x x x The questioned search warrant has correctly been declared null and void in the Court's decision as a general warrant issued in gross violation of the constitutional mandate that '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' (Bill of Rights, sec. 3). The Bill of Rights orders the absolute exclusion of all illegally obtained evidence: 'Any evidence obtained in violation of this ... section shall be inadmissible for any purpose in any proceeding' (Sec. 4[2]). This constitutional mandate expressly adopting the exclusionary rule has proved by historical experience to be the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures by outlawing all evidence illegally seized and thereby removing the incentive on the part of state and police officers to disregard such basic rights. What the plain language of the Constitution mandates is beyond the power of the courts to change or modify.

"All the articles thus seized fall under the exclusionary rule totally and unqualifiedly and cannot be used against any of the three petitioners, as held by the majority in the recent case of Galman vs. Pamaran (G.R. Nos. 71208-09, August 30, 1985). x x x"

ACCORDINGLY, considering the respective positions now taken by the parties, petitioners' Motion for Partial Reconsideration of this Court's Decision of October 8, 1985 is GRANTED, and the dispositive portion thereof is hereby revised to read as follows:

WHEREFORE, Search Warrant No. 80-84 issued on August 6, 1984 by respondent Executive Judge Ernani Cruz Paño is hereby annulled and set aside, and the Temporary Restraining Order enjoining respondents from introducing evidence obtained pursuant to the Search Warrant in the Subversive Documents Case hereby made permanent. The personalities seized by virtue of the illegal Search Warrant are hereby ordered returned to petitioners.

SO ORDERED.

Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, and Bidin, JJ., concur. Teehankee, C.J., concur and file a separate opinion.

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CONCURRING

TEEHANKEE, C.J.:

I felicitate my colleagues for granting petitioners' motion for reconsideration and now totally applying the exclusionary rule by declaring that the search and seizure of the personalities at petitioner Mila Aguilar Roque's dwelling at Mayon Street, Quezon City was illegal and could not be deemed as incident to her arrest earlier on board a public vehicle on the road away from and outside of her dwelling. Solicitor General Sedfrey A. Ordonez' stand in support hereof signifies one more great step in fulfillment of the pledge of the present government of granting full recognition and restoration of the civil and political liberties of the people and rejecting the oppressive and repressive measures of the past authoritarian regime.

The original majority decision citing sec. 12, Rule 126 of the Rules of Court[1] had held that said Rule states "a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this latter case, 'the extent and reasonableness of the search must be decided on its

own facts and circumstances, and it has been stated that, in the application of general rules, there is some confusion in the decisions as to what constitutes the extent of the place or premises which may be searched.' 'What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals.'"

This pronouncement had the support of a majority of nine (9) Justices of the Court at the time. Three (3) members had dissented,[2] while two (2) other members took no part or reserved their vote.[3]

As the petitioners stressed in their motion for reconsideration, "(I)f the majority opinion becomes settled law, the constitutional protection would become meaningless. The military or police would no longer apply for search warrants. All that they would do is procure a search (sic)[4] warrant or better still, a PDA, for the person whose house they would want to search. Armed with a warrant of arrest or a PDA, the military or police would simply wait for the person to reach his house, then arrest him. Even if the person arrested does not resist and has in fact been taken away already from his house, under the majority ruling, the arresting party would still have the right to search the house of the arrestee and cart away all his things and use them as evidence against him in court.

"In such a situation, what then happens to that stringent constitutional requirement that 'no search warrant shall issue except upon probable cause to be determined by the judge, or such other responsible officers 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 things to be seized' and the constitutional injunction that 'any evidence obtained in violation of this shall be inadmissible for any purpose in any proceeding.'"[5]

The better and established rule is a strict application of the exception provided in Rule 126, sec. 12 and that is to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of and incident to his or her arrest and to "dangerous weapons or anything which may be used as proof of the commission of the offense." Such warrantless search obviously cannot be made in a place other than the place of arrest.[6]

Applying the aforesaid rule to this case, the undisputed fact is that petitioner Mila Aguilar Roque was arrested at 11:30 a.m. aboard a public vehicle on the road (at Mayon and P. Margal Sts.). The pronouncement by the majority at that time, that as an incident to her arrest, her dwelling at 239-B Mayon Street could be searched even without a warrant for evidence of the charges of rebellion filed against her was contrary to the constitutional proscription, as defined by law and jurisprudence. It was tantamount to sanctioning an untenable violation, if not nullification, of the basic constitutional right and guarantee against unreasonable searches and seizures.

With the Court now unanimously upholding the exclusionary rule, in toto, the constitutional mandate is given full force and effect. This constitutional mandate expressly adopting the exclusionary rule has proved by historical experience to be the practical means of enforcing the constitutional injunction against unreasonable searches and seizures by outlawing all evidence illegally seized and thereby removing the incentive on the part of the military and police officers to disregard such basic rights. This is of special public importance and serves as a shield in the remote provinces and rural areas to the people who have no access to courts for prompt and immediate relief from violations of their constitutional rights against unreasonable searches and seizures.

In this case, the arresting CSG group of the military themselves knew that they needed a search warrant but they obtained the void general warrant in question. Necessarily, the seizure of documents and personal effects with such a void warrant could not be justified "as an incident of an arrest" outside petitioner's dwelling and the Constitution bars their admissibility as evidence and ordains their return to petitioners.

[1] "Section 12. Search without warrant of person arrested. — 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."

[2] Claudio Teehankee, Vicente Abad Santos and Serafin Cuevas, JJ.

[3] Ramon Aquino and Hermogenes Concepcion Jr., JJ.

[4] A manifest error: This clearly refers to arrest warrant, from the thrust of the argument.

[5] Record, page 201.

[6] The 1985 Revised Rules on Criminal Procedure expressly clarifies this through a change in the caption, as follows: "Sec. 12 Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." (Rule 126)

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