

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BASILIO DAMASO @ BERNARDO/BERNIE MENDOZA @ KA DADO,
ACCUSED-APPELLANT.**

G.R. No. 93516. August 12, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Basilio Damaso, was originally charged in an information filed before the Regional Trial Court of Dagupan City with violation of Presidential Decree No. 1866 in furtherance of, or incident to, or in connection with the crime of subversion, together with Luzviminda Morados y Galang @ Ka Mel, Teresita Calosa y Macabangon @ Ka Tessie, Ricardo Calosa y Perez @ Ka Ric, Marites Calosa y Evangelista @ Ka Tess, Eric Tanciangco y Capira @ Ka Ric and Luz Tanciangco y Pencial @ Ka Luz (Records, p. 3). Such information was later amended to exclude all the above-enumerated persons except the accused-appellant from the criminal charge. The amended information reads:

"That on or about the 19th day of June, 1988, in the City of Dagupan, Philippines, and within the territorial jurisdiction of this Honorable Court, the above-named accused, Basilio DAMASO @ Bernardo/Bernie Mendoza @ KA DADO, did then and there, wilfully, unlawfully and criminally, have in his possession, custody and control one (1) M14 Rifle bearing Serial No. 1249935 with magazine and Fifty-Seven (57) live ammunition, in furtherance of, or incident to, or in connection with the crime of subversion, filed against said accused in the above-entitled case for Violation of Republic Act 1700, as amended by Executive order No. 276.

"Contrary to Third Paragraph of Sec. 1, P.D. 1866." (Records, p. 20)

Upon arraignment, the accused-appellant pleaded not guilty to the crime charged (Records, p. 37). Trial on the merits ensued. The prosecution rested its case and offered its exhibits for admission. The counsel for accused-appellant interposed his objections to the admissibility of the prosecution's evidence on grounds of its being hearsay, immaterial or irrelevant and illegal for lack of a search warrant. On these bases, he, thereafter, manifested that he was not presenting any evidence for the accused (TSN, December 28, 1989, p. 139). On January 17, 1990, the trial court rendered its decision, the dispositive portion of which states:

"WHEREFORE, the Court finds accused Basilio Damaso alias Bernardo/Bernie Mendoza alias Ka Dado guilty beyond reasonable doubt of Violation of Presidential Decree Number 1866, and considering that the Violation is in furtherance of, or incident to, or in connection with the crime of subversion, pursuant to Section 1, Paragraph 3 of Presidential Decree Number 1866 hereby sentences the accused to suffer the penalty of Reclusion Perpetua and to pay the costs of the proceedings.

"The M14 Rifle bearing Serial Number 1249935 and live ammunition and all the articles and/or items seized on June 19, 1988 in connection with this case and marked and submitted in court as evidence are ordered confiscated and forfeited in favor of the government, the same to be turned over to the Philippine Constabulary Command at Lingayen, Pangasinan.

"SO ORDERED." (Rollo, p. 31)

Thus, this present recourse with the following assignment of errors:

A. THE TRIAL COURT ERRED IN FINDING ACCUSED APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS AND AMMUNITIONS IN FURTHERANCE OF, OR INCIDENT TO, OR IN CONNECTION WITH THE CRIME OF SUBVERSION DESPITE THE WOEFULLY INADEQUATE EVIDENCE PRESENTED BY THE PROSECUTION.

B. THE COURT ERRED IN CONVICTING THE ACCUSED WHEN THE QUALIFYING CIRCUMSTANCES OF SUBVERSION WAS NOT PROVEN BY THE PROSECUTION.

C. THE LOWER COURT ERRED IN CONSIDERING AS EVIDENCE THE FIREARMS DOCUMENTS AND ITEMS LISTED IN EXHIBIT E AFTER THEY WERE DECLARED INADMISSIBLE WITH FINALITY BY ANOTHER BRANCH OF THE SAME COURT AND THE SAID EVIDENCE ARE THE FRUITS OF AN ILLEGAL SEARCH.

D. THE TRIAL COURT ERRED IN DENYING THE MOTIONS TO QUASH FILED BY ACCUSED-APPELLANT BECAUSE THE SEPARATE CHARGE FOR SUBVERSION AGAINST HIM ABSORBED THE CHARGE FOR ILLEGAL POSSESSION OF FIREARMS IN FURTHERANCE OR OF INCIDENT TO, OR IN CONNECTION WITH THE CRIME OF SUBVERSION." (pp. 55-66, Rollo)

The antecedent facts are set forth by the Solicitor General in his Brief, as follows:

"On June 18, 1988, Lt. Candido Quijardo, a Philippine Constabulary officer connected with the 152nd PC Company at Lingayen, Pangasinan, and some companions were sent to verify the presence of CPP/NPA members in Barangay Catacdang, Arellano-Bani, Dagupan City. In said place, the group apprehended Gregorio Flameniano, Berlina Aritumba, Revelina Gamboa and Deogracias Mayaoa. When interrogated, the persons apprehended revealed that there was an underground safehouse at Gracia Village in Urdaneta, Pangasinan. After coordinating with the Station Commander of Urdaneta, the group proceeded to the house in Gracia Village. They found subversive documents, a radio, a 1 x 7 caliber .45 firearm and other items (pp. 4, 6-7, tsn, October 23, 1989).

"After the raid, the group proceeded to Bonuan, Dagupan City, and put under surveillance the rented apartment of Rosemarie Aritumba, sister of Berlina Aritumba whom they earlier arrested. They interviewed Luzviminda Morados, a visitor of Rosemarie Aritumba. She stated that she worked with Bernie Mendoza, herein appellant. She guided the group to the house rented by appellant. When they reached the house, the group found that it had already been vacated by the occupants. Since Morados was hesitant to give the new address of Bernie Mendoza, the group looked for the Barangay Captain of the place and requested him to point out the new house rented by appellant. The group again required Morados to go with them. When they reached the house, the group saw Luz Tanciangco outside. They told her that they already knew that she was a member of the NPA in the area. At first, she denied it, but when she saw Morados she requested the group to go inside the house. Upon entering the house, the group, as well as the Barangay Captain, saw radio sets, pamphlets entitled 'Ang Bayan', xerox copiers and a computer machine. They also found persons who were companions of Luz Tanciangco (namely, Teresita Calosa, Ricardo Calosa, Marites Calosa, Eric Tanciangco and Luzviminda Morados). The group requested the persons in the house to allow them to look around. When Luz Tanciangco opened one of the rooms, they saw books used for subversive orientation, one M-14 rifle, bullets and ammunitions, Kenwood radio, artificial beard, maps of the Philippines, Zambales, Mindoro an(d) Laguna and other items. They confiscated the articles and brought them to their headquarters for final inventory. They likewise brought the persons found in the house to the headquarters for investigation. Said persons revealed that appellant was the lessee of the house and owned the items confiscated therefrom (pp. 8-12, tsn, ibid; pp. 2-4, 6, 8-10, 31, tsn, October 31, 1989)." (p. 5, Brief of Plaintiff-Appellee, p. 91, Rollo)

While We encourage and support law enforcement agencies in their drive against lawless elements in our society, We must, however, stress that the latter's efforts to this end must be done within the parameters of the law. In the case at bar, not only did We find that there are serious flaws in the method used by the law officers in obtaining evidence against the accused-appellant but also that the evidence as presented against him is weak to justify conviction.

We reverse.

The records of this case show that the accused-appellant was singled out as the sole violator of P.D. No. 1866, in furtherance of, or incident to, or in connection with the crime of subversion. Yet, there is no substantial and credible evidence to establish the fact that the appellant is allegedly the same person as the lessee of the house where the M-14 rifle and other subversive items were found or the owner of the said items. The prosecution presented two witnesses who attested to this fact, thus:

"Lieutenant Candito Quijardo

Fiscal

"Q : How about this Bernie Mendoza, who was the one renting the house?

"A : He was not around at that time, but according to Luz (Tanciangco) who mentioned the name Bernie Mendoza (as) the one who was renting the house and at the same time claiming that it was Bernie Mendoza who owns the said items." (TSN of October 31, 1989, p.40)

"x x x.

"Q : I am showing you another picture which we request to be marked as Exhibit 'K-2,' tell us if it has any connection to the house?

"A : The same house, sir.

"Q : Now, this person who according to you allegedly occupied the house at Bonuan Gueset, by the name of Bernie Mendoza, in your capacity as a Military officer, did you find out the identity?

"A : I am not the proper (person) to tell the real identity of Bernie de Guzman.

"Q : Can you tell the Honorable Court the proper person who could tell the true identity of Bernie Mendoza?

"A : The Intelligence of the Pangasinan PC Command.

"Q : Can you name these officers?

"A : Captain Roberto Rosales and his assistant, First Lt. Federico Castro. (ibid, pp. 54-55)

"M/Sgt. Artemio Gomez

"Q : That underground house, do you know who was the principal occupant of that house?

"x x x.

"A : During our conversation with the occupants, they revealed that a certain Ka Bernie is the one occupying the house, Bernie Mendoza alias Basilio Damaso.

"x x x. (TSN, December 27, 1989, pp. 126-128)

Clearly, the aforequoted testimonies are hearsay because the witnesses testified on matters not on their own personal knowledge. The Solicitor General, however, argues that while the testimonies may be hearsay, the same

are admissible because of the failure of counsel for appellant to object thereto.

It is true that the lack of objection to a hearsay testimony results in its being admitted as evidence. But, one should not be misled into thinking that since these testimonies are admitted as evidence, they now have probative value. Hearsay evidence, whether objected to or not, cannot be given credence. In *People v. Valero*, We emphatically declared that:

"The failure of the defense counsel to object to the presentation of incompetent evidence, like hearsay evidence or evidence that violates the rule of *res inter alios acta*, or his failure to ask for the striking out of the same does not give such evidence any probative value. The lack of objection may make any incompetent evidence admissible. But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence whether objected to or not has no probative value." (L-45283-84, March 19, 1982, 112 SCRA 675, underlining supplied)

It is unfortunate that the prosecution failed to present as witnesses the persons who knew the appellant as the lessee and owner of the M-14 rifle. In this way, the appellant could have exercised his constitutional right to confront the witnesses and to cross-examine them for their truthfulness. Likewise, the records do not show any other evidence which could have identified the appellant as the lessee of the house and the owner of the subversive items. To give probative value to these hearsay statements and convict the appellant on this basis alone would be to render his constitutional rights useless and without meaning.

Even assuming for the sake of argument that the appellant is the lessee of the house, the case against him still will not prosper, the reason being that the law enforcers failed to comply with the requirements of a valid search and seizure proceedings.

The right against unreasonable searches and seizures is enshrined in the Constitution (Article III, Section 2). The purpose of the law is to prevent violations of private security in person and property, and unlawful invasions of the sanctity of the home by officers of the law acting under legislative or judicial sanction and to give remedy against such usurpations when attempted (see *Alvero v. Dizon*, 76 Phil. 637, 646). However, such right is not absolute. There are instances when a warrantless search and seizure becomes valid, namely: (1) search incidental to an arrest; (2) search of a moving vehicle; and (3) seizure of evidence in plain view (*Manipon, Jr. v. Sandiganbayan*, L-58889, July 31, 1986, 143 SCRA 267, 276). None of these exceptions is present in this case.

The Solicitor General argues otherwise. He claims that the group of Lt. Quijardo entered the appellant's house upon invitation of Luz Tanciangco and Luzviminda Morados, helper of the appellant; that when Luz Tanciangco opened one of the rooms, they saw a copier machine, computer, M-14 rifle, bullets and ammunitions, radio set and more subversive items; that technically speaking, there was no search as the group was voluntarily shown the articles used in subversion; that besides, a search may be validly conducted without a search warrant with the consent of the person searched as in this case, appellant's helper and Luz Tanciangco allowed them to enter and to look around the appellant's house; and that since the evidence seized was in plain view of the authorities, the same may be seized without a warrant.

We are not persuaded. The constitutional immunity from unreasonable searches and seizures, being a personal one, cannot be waived by anyone except the person whose rights are invaded or one who is expressly authorized to do so in his or her behalf (*De Garcia v. Locsin*, 65 Phil. 689, 695). In the case at bar, the records show that appellant was not in his house at that time Luz Tanciangco and Luz Morados, his alleged helper, allowed the authorities to enter it (TSN, October 31, 1989, p. 10). We find no evidence that would establish the fact that Luz Morados was indeed the appellant's helper or if it was true that she was his helper, that the appellant had given her authority to open his house in his absence. The prosecution likewise failed to show if Luz Tanciangco has such an

authority. Without this evidence, the authorities' intrusion into the appellant's dwelling cannot be given any color of legality. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government (*Rodriguez v. Evangelista*, 65 Phil. 230, 235). As a consequence, the search conducted by the authorities was illegal. It would have been different if the situation here demanded urgency which could have prompted the authorities to dispense with a search warrant. But the record is silent on this point. The fact that they came to the house of the appellant at nighttime (Exh. J, p. 7, Records), does not grant them the license to go inside his house. In *Alih v. Castro*, We ruled that:

"The respondents cannot even plead the urgency of the raid because it was in fact not urgent. They knew where the petitioners were. They had every opportunity to get a search warrant before making the raid. If they were worried that the weapons inside the compound would be spirited away, they could have surrounded the premises in the meantime, as a preventive measure. There was absolutely no reason at all why they should disregard the orderly processes required by the Constitution and instead insist on arbitrarily forcing their way into the petitioner's premises with all the menace of a military invasion." (G.R. No. 69401, June 23, 1987, 151 SCRA 279, 286)

Another factor which illustrates the weakness of the case against the accused-appellant is in the identification of the gun which he was charged to have illegally possessed. In the amended information (*supra*, pp. 1-2), the gun was described as an M-14 rifle with serial no. 1249935. Yet, the gun presented at the trial bore a different serial number thus:

"FISCAL:

Q. Will you kindly restate again the items that you found inside the house?

Lt. Quijardo:

A. When she opened the doors of the rooms that we requested for, we immediately saw different kinds of books of which we believed to be used for subversive orientation and the M-14 rifle.

Q. In what portion of the house did you find this M-14 rifle which you mentioned?

A. In the same room of which the subversive documents were placed.

Q. If this firearm would be shown to you would you be able to identify the same?

A. Yes, sir.

Q. I am showing to you a rifle bearing a serial number 1249985 which for purposes of identification, may we request your Honor, that this rifle be marked as Exhibit 'D.'

"COURT:

Mark it.

"FISCAL:

Q. Kindly examine the said firearm and tell the Honorable Court the relation of that firearm to the firearm which according to you you found inside the room allegedly occupied by one Bernie Mendoza?

A. This is the same rifle which was discovered during our raid in the same house." (TSN, October 31, 1989, pp. 36-38, underlining supplied).

The Solicitor General contends that the discrepancy is merely a typographical error.

We do not think so. This glaring error goes into the substance of the charge. Its correction or lack of it could spell the difference between freedom and incarceration of the accused-appellant.

In crimes of illegal possession of firearm as in this case, the prosecution has the burden to prove the existence of the firearm and that the accused who possessed or owned the firearm does not have the corresponding license for it. Since the gun as identified at the trial differs from the gun described in the amended information, the corpus delicti (the substance of the crime, the fact that a crime has actually been committed) has not been fully established. This circumstance coupled with dubious claims of appellant's connection to the house (where the gun was found) have totally emasculated the prosecution's case.

But even as We find for the accused-appellant, We, take exception to the argument raised by the defense that the crime of subversion absorbs the crime of illegal possession of firearm in furtherance of or incident to or in connection with the crime of subversion. It appears that the accused-appellant is facing a separate charge of subversion. The defense submits that the trial court should have peremptorily dismissed this case in view of the subversion charge. In *People of the Philippines v. Asuncion, et al.*, We set forth in no uncertain terms the futility of such argument. We quote:

"If We are to espouse the theory of the respondents that force and violence are the very essence of subversion, then it loses its distinction from rebellion. In *People v. Liwanag* (G.R. No. 27683; 1976, 73 SCRA 473, 480 [1976]), the Court categorically distinguished subversion from rebellion, and held:

'Violation of Republic Act No. 1700, or subversion, as it is more commonly called, is a crime distinct from that of actual rebellion. The crime of rebellion is committed by rising publicly and taking up arms against the Government for any of the purposes specified in Article 134 of the Revised Penal Code; while the Anti-Subversion Act (Republic Act No. 1700) punishes affiliation or membership in a subversive organization as defined therein. In rebellion, there must be a public uprising and taking of arms against the Government; whereas, in subversion, mere membership in a subversive association is sufficient and the taking up of arms by a member of a subversive organization against the Government is but a circumstance which raises the penalty to be imposed upon the offender.' (Underscoring supplied)

"Furthermore, in the case of *Buscayno v. Military Commission* (G.R. 58284, 109 SCRA 289 [1981]), this Court said that subversion, like treason, is a crime against national security, while rebellion is a crime against public order. Rising publicly and taking arms against the Government is the very element of the crime of rebellion. On the other hand, R.A. 1700 was enacted to outlaw the Communist Party of the Philippines (CPP), other similar associations and its successors because their existence and activities constitute a clear, present and grave danger to national security.

"The first Whereas clause of R.A. 1700 states that the CPP is an organized conspiracy to overthrow the Government, not only by force and violence but also by deceit, subversion and other illegal means. This is a recognition that subversive acts do not only constitute force and violence (contrary to the arguments of private respondents), but may partake of other forms as well. One may in fact be guilty of subversion by authoring subversive materials, where force and violence is neither necessary or indispensable."

"Private respondents contended that the Court in *Misolas v. Panga* impliedly ruled that if an accused is simultaneously charged with violation of P.D. 1866 and subversion, the doctrine of absorption of common crimes as applied in rebellion would have found application therein. The respondents relied on the opinion of this Court when it said:

'x x x in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of

firearms and ammunition under PD 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in Hernandez, Geronimo and Rodriquez find no application in this case.'

"This is however a mere obiter. In the above case, the Court upheld the validity of the charge under the third paragraph of Section 1 of P.D. 1866. The Court opined that the dictum in the Hernandez case is not applicable in that case, considering that the legislature deemed it fit to provide for two distinct offenses: (1) illegal possession of firearms qualified by subversion (P.D. 1866) and (2) subversion qualified by the taking up of arms against the Government (R.A. 1700). 'The practical result of this may be harsh or it may pose grave difficulty on an accused in instances similar to those that obtain in the present case, but the wisdom of the legislature in the lawful exercise of its power to enact laws is something that the Court cannot inquire into. . .'" (G.R. Nos. 83837-42, April 22, 1992).

Nonetheless, the evidence in hand is too weak to convict the accused-appellant of the charge of illegal possession of firearm in furtherance of, or incident to or in connection with the crime of subversion, We are therefore, left with no option, but to acquit the accused on reasonable doubt.

ACCORDINGLY, the decision appealed from is hereby REVERSED and the appellant is ACQUITTED with costs de oficio.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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