

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO EVARISTO AND NOLI CARILLO, ACCUSED-APPELLANTS.

G.R. No. 93828. December 11, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision of the Regional Trial Court of Trece Martires, Cavite*, in Criminal Case No. NC-267, entitled "People of the Philippines v. Santiago Evaristo and Noli Carillo," finding the accused guilty of illegal possession of firearms in violation of Presidential Decree No. 1866 and accordingly sentencing them to the penalty of life imprisonment.

The information indicting the accused-appellants (hereinafter referred to as the appellants) reads:

"The undersigned Assistant Provincial Fiscal accuses SANTIAGO EVARISTO AND NOLI CARILLO of the crime of VIOLATION of PD 1866, committed as follows:

That on or about the 23rd day of August 1988, in the Municipality of Mendez, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being private persons not authorized by law did then and there, wilfully, unlawfully and feloniously manufacture, repair and kept (sic) in their possession, custody and control one (1) caliber 38 revolver (paltik) with two live ammunition and one (1) empty shell of said caliber, two (2) 12 gauge home made shot guns, one (1) caliber 22 revolver (sumpak) and two (2) vise grips and one (1) plier use (sic) in the manufacture and repair of said firearms without any permit or license from competent (sic) authority.

CONTRATRY (sic) TO LAW.

Cavite City, August 30, 1988." [1]

Appellants having entered a plea of not guilty, trial thereupon commenced, with the prosecution and the defense presenting their respective witnesses and evidence to support their divergent versions of the events leading to the arrest of the appellants.

A careful review of the records and the testimony of the prosecution witnesses, Sgt. Eladio Romero and C1C Edgardo Vallarta of the Philippine Constabulary, indicates that on the day in question, a contingent composed of Romero and Vallarta, together with a Sgt. Daniel Maligaya, also of the Philippine Constabulary, and two (2) members of the Integrated National Police, were on routine patrol duty in Barangay III, Mendez, Cavite. At or about 5:50 in the afternoon, successive bursts of gunfire were heard in the vicinity. Proceeding to the approximate source of the same, they came upon one Barequiel Rosillo who was firing a gun into the air.

Seeing the patrol, Rosillo ran to the nearby house of appellant Evaristo prompting the lawmen to pursue him. Upon approaching the immediate perimeter of the house, specifically a cement pavement or porch leading to the same, the patrol chanced upon the slightly inebriated appellants, Evaristo and Carillo. Inquiring as to the whereabouts of Rosillo, the police patrol members were told that he had already escaped through a window of the

house. Sgt. Vallarta immediately observed a noticeable bulge around the waist of Carillo who, upon being frisked, admitted the same to be a .38 revolver. After ascertaining that Carillo was neither a member of the military nor had a valid license to possess the said firearm, the gun was confiscated and Carillo invited for questioning.

As the patrol was still in pursuit of Rosillo, Sgt. Romero sought Evaristo's permission to scour through the house, which was granted. In the sala, he found, not Rosillo, but a number of firearms and paraphernalia supposedly used in the repair and manufacture of firearms, all of which, thereafter, became the basis for the present indictment against Evaristo.

For their part, the appellants dispute the above narration of the events in question, alleging that they were forcibly taken into custody by the police officers and even subjected to physical and mental indignities. They denied ownership or knowledge of any of the firearms presented in evidence, contending that these were purposely planted in their possession by the prosecution witnesses and other police authorities.

After evaluation of all the evidence, the trial court rendered the now-assailed decision dated 18 April 1990, the dispositive portion of which reads:

"Wherefore, for having possessed firearms in violation of P.D. No. 1866, accused Santiago Evaristo and Noli Carillo are hereby sentenced to serve the penalty provided for under Sec. 1 thereof. The full period of their preventive imprisonment shall be deducted from the afore-mentioned penalty.

With costs de oficio.

SO ORDERED." [2]

Hence, this petition, assigning the following as errors of the trial court:

- "1. The lower court gravely erred in admitting Exhibits 'B' to 'F' in evidence considering that those are illegally seized evidence;
2. The lower court gravely erred in finding that said illegally seized evidence are firearms as contemplated in Presidential Decree No. 1866; and
3. The lower court gravely erred in giving credence to the arresting officer's testimonies which are patently contradictory and half truths (sic) testimonies." [3]

First, on the issue of illegal search. The pertinent rule on the matter is Article III of the Constitution, the relevant portion of which provides:

"sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined 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."

"sec. 3 (1) xxx xxx xxx

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

It is to be noted that what the above constitutional provisions prohibit are unreasonable searches and seizures. For a search to be reasonable under the law, there must, as a rule, be a search warrant validly issued by an appropriate judicial officer. Yet, the rule that searches and seizures must be supported by a valid search warrant is not an absolute and inflexible rule, for jurisprudence has recognized several exceptions to the search warrant

requirement. Among these exceptions is the seizure of evidence in plain view, adopted by this jurisdiction from the pronouncements of the United States Supreme Court in *Harris vs. U.S.*[4] and *Coolidge vs. New Hampshire*[5]. Thus, it is recognized that objects inadvertently falling in the plain view of an officer who has the right to be in the position to have that view, are subject to seizure and may be introduced in evidence.[6]

The records in this case show that Sgt. Romerosa was granted permission by the appellant Evaristo to enter his house. The officer's purpose was to apprehend Rosillo whom he saw had sought refuge therein. Therefore, it is clear that the search for firearms was not Romerosa's purpose in entering the house, thereby rendering his discovery of the subject firearms as inadvertent and even accidental.

With respect to the firearm seized from the appellant Carillo, the Court sustains the validity of the firearm's seizure and admissibility in evidence, based on the rule on authorized warrantless arrests. Section 5, Rule 113 of the 1985 Rules on Criminal Procedure provides:

"SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

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

(b) When an offense has 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."

For purposes of the present case, the second circumstance by which a warrantless arrest may be undertaken is applicable. For, as disclosed by the records, the peace officers, while on patrol, heard bursts of gunfire and thus proceeded to investigate the matter. This incident may well be within the "offense" envisioned by par. 5(b) of Rule 113, Rules of Court. As the Court held in *People of the Philippines v. Sucro*,[7] "an offense is committed in the presence or within the view of an officer, within the meaning of the rule authorizing an arrest without a warrant, when the officer sees the offense, although at a distance, or HEARS THE DISTURBANCES CREATED THEREBY AND PROCEEDS AT ONCE TO THE SCENE THEREOF." [8]

The next inquiry is addressed to the existence of personal knowledge on the part of the peace officer of facts pointing to the person to be arrested as the perpetrator of the offense. Again, reference to the records resolves said query. Giving chase to Rosillo, the peace officers came upon the two (2) appellants who were then asked concerning Rosillo's whereabouts. At that point, Sgt. Vallarta discerned the bulge on the waist of Carillo. This visual observation along with the earlier report of gunfire, as well as the peace officer's professional instincts, are more than sufficient to pass the test of the Rules. Consequently, under the facts, the firearm taken from Carillo can be said to have been seized incidental to a lawful and valid arrest.

The next area to be addressed is the allegation of the appellants that the statute's coverage does not extend to firearms that are not functional or serviceable. The Court does not agree.

Section 1 of P.D. No. 1866 penalizes "any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, PART OF FIREARM, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition." [9] It is clear that the law makes no distinction as to serviceable or functional firearms. Indeed, the possession of even a part of a firearm is sufficient to come within the prohibitive ambit of the statute. *Ubi lex non distinguit nec nos distinguere debemus*.

Lastly, the appellants challenge the veracity of the testimonies of the prosecution witnesses, maintaining that these were inconsistent with each other, thereby giving rise to the conclusion that the entire incident was a contrivance on their part. Specifically, they point to the apparent conflict in the statement of the prosecution witnesses that there were only three (3) individuals in the vicinity (aside from the peace officers) as opposed to the testimony of another peace officer, testifying as a hostile witness, that aside from the appellants and Rosillo, there were also other people in the vicinity, such as Evaristo's mother, brother and other farmers.

The Court sees no such conflict. A recourse to the trial court proceedings easily shows that the two (2) prosecution witnesses, Sgt. Romerosa and C1C Vallarta, testified in a straightforward and candid manner, categorically identifying the appellants as the two (2) individuals they had apprehended and clearly narrating the circumstances of such apprehension. The defense has given no possible reason or motivation for these peace officers to make false accusations against the appellants. Absent the presentation of such defense evidence, the testimony of the peace officers should deserve full credence.

WHEREFORE, the judgment of the trial court of Trece Martires, Cavite in Criminal Case No. NC-267 finding the accused Santiago Evaristo and Noel Carillo guilty beyond reasonable doubt for Illegal Possession of Firearms as defined in Presidential Decree No. 1866, is hereby AFFIRMED.

The Court orders the forfeiture of the firearms and other incidental paraphernalia found in the possession of the appellants, in favor of the Philippine National Police (PNP) to be disposed of in accordance with law.

No pronouncement as to costs.

SO ORDERED.

Griño-Aquino and Bellosillo, JJ., concur.

Cruz, J., (Chairman), see separate opinion.

* Presided over by Hon. Enrique M. Almario

[1] Rollo, p. 4

[2] Rollo, pp. 21-22

[3] Rollo, Appellant's Brief, p. 55

[4] 390 U.S. 324

[5] 403 U.S. 443

[6] Regalado, Remedial Law Compendium, Vol. 2, 1989 Edition, p. 427

[7] G.R. No. 93239, 18 March 1991, 195 SCRA 388

[8] Ibid, citing U.S. vs. Fortaleza, 12 Phil. 472 and U.S. vs. Samonte, 16 Phil. 516

[9] Emphasis (underscoring and capitals) supplied

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SEPARATE OPINION

CRUZ, J.:

I concur insofar as the ponencia holds that there was a valid seizure of the firearms and paraphernalia found in Evaristo's house because, first, he agreed to its search and, second, the said prohibited articles were in plain view and open to eye and hand. But I must express my reservations on the conclusion that the bulge in Carillo's waist provided the probable cause that justified the warrantless search of his person and the seizure from him of the paltik.

This case is similar to *People v. Malmstedt*, 198 SCRA 401, where I also dissented. As I did there, I will here also observe that the search does not come under any of the three situations enumerated under Rule 113, Section 5, of the Rules of Court, where a warrantless arrest and search may be made. Paragraph (a) and (c) are clearly not inapplicable. And neither is Par. (b) because although it may be conceded that a crime had just been committed the arresting officers had no personal knowledge that Evaristo had committed it. In fact, they were pursuing Rosillo, whom they actually saw firing a gun in the air, and not Carillo, whose assistance they even sought. The circumstance that the search resulted in the discovery of the unlicensed firearm did not and could not retroactively validate the warrantless search for it was clearly void ab initio. The seized pistol is the fruit of the poisonous tree and should not have been used in evidence against Rosillo.

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