

NONILLON A. BAGALIHOG, PETITIONER, VS. HON. JUDGE GIL P. FERNANDEZ, PRESIDING JUDGE OF BR. 45, RTC OF MASBATE; AND MAJOR JULITO ROXAS, RESPONDENTS.

G.R. No. 96356. June 27, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

We are asked once again to rule on the validity of a search and seizure as tested by the requirements of the Bill of Rights and to balance the demands of an orderly society with the imperatives of individual liberty.

On March 17, 1989, Rep. Moises Espinosa was shot to death shortly after disembarking at the Masbate Airport. Witnesses said one of the gunmen fled on a motorcycle. On the same day, the petitioner's house, which was near the airport, was searched with his consent to see if the killers had sought refuge there. The search proved fruitless.

Two days later, Capt. Julito Roxas and his men from the Philippine Constabulary seized the petitioner's motorcycle and took it to the PC headquarters in Masbate. They had no search warrant. The motorcycle was impounded on the suspicion that it was one of the vehicles used by the killers.

After investigation, the petitioner and several others were charged with multiple murder and frustrated murder for the killing of Espinosa and three of his bodyguards and the wounding of another person.

On June 21, 1989, the petitioner filed a complaint against Capt. Roxas for the recovery of the motorcycle with an application for a writ of replevin, plus damages in the total amount of P55,000.00.[1] This was docketed as Civil Case No. 3878 in Branch 48 of the Regional Trial Court of Masbate.

On November 7, 1989, the petitioner filed an urgent manifestation for the deposit of the motorcycle with the clerk of court of the Regional Trial Court of Masbate, on the ground that PC soldiers were using the vehicle without authority. The motion was granted on November 10, 1989, by Judge Ricardo Butalid.

Judge Butalid later inhibited himself and Civil Case No. 3878 was transferred to Branch 45, presided by Judge Gil Fernandez. In the criminal cases, a change of venue was ordered by this Court from Branch 45 of the Regional Trial Court of Masbate to Branch 56 of the Regional Trial Court of Makati.

On October 12, 1990, Judge Fernandez dismissed Civil Case No. 3878, in an order holding in part as follows:

The question to be resolved is whether Replevin is proper to recover the possession of said motorcycle.

It is admitted that the motorcycle in question, now in the possession of the Clerk of Court of Masbate, is to be used as evidence in Criminal Case Nos. 5811-5814, now pending trial before Branch 56 of the Regional Trial Court of Makati, Metro Manila. This Court opined that it has no jurisdiction to release evidence impounded or surrendered to the PC-CIS Task Force Espinosa.

Property seized in enforcing criminal laws is in the custody of the law and cannot be replevied until such custody

is ended. (77 C.J.S. 28.)

Granting as claimed by plaintiff that said motorcycle was illegally seized, he can raise the issue when presented during the trial.

The proper Court to order its release, the motorcycle in question, is the Presiding Judge of Branch 56 of the Regional Trial Court of Makati, Metro Manila.

WHEREFORE, this case is hereby ordered DISMISSED for lack of jurisdiction.

Reconsideration having been denied, the petitioner now asks this Court to reverse the said order.

His contention is that the motorcycle was invalidly seized and that therefore he has a right to its return. The proper remedy for this purpose is his complaint for recovery and the issuance of a writ of replevin as authorized by the Rules of Court. In refusing to grant him relief and dismissing the case instead on the ground of lack of jurisdiction, the respondent court committed reversible error that he prays this Court will correct.

In his comment, the private respondent admits the absence of a search warrant when the motorcycle was seized but stresses that the crime perpetrated is a heinous offense. Espinosa was a man of consequence. The motorcycle in question is an extremely mobile vehicle and can be easily dismantled or hidden, and the unique situation existing at that time required him to place it in the custody of the PC-CIS Task Force Espinosa without first securing a search warrant. In doing so, he merely complied with the orders of his superior to preserve the vehicle for use as evidence in the criminal cases.

We share Captain Roxas's concern for the apprehension of the killers but cannot agree with his methods. While recognizing the need for the punishment of crime, we must remind him that in our system of criminal justice, the end does not justify the means. For all his strong conviction about the guilt of the petitioner, the private respondent must still abide by the Constitution and observe the requirements of the Bill of Rights.

Article III, Section 2, 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 be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge 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.

This guaranty is one of the greatest of individual liberties and was already recognized even during the days of the absolute monarchies, when the king could do no wrong. On this right, Cooley wrote: "Awe surrounded and majesty clothed the King, but the humblest subject might shut the door of his cottage against him and defend from intrusion that privacy which was as sacred as the kingly prerogatives." [2]

The provision protects not only those who appear to be innocent but also those who appear to be guilty but are nevertheless to be presumed innocent until the contrary is proved. The mere fact that in the private respondent's view the crime involved is "heinous" and the victim was "a man of consequence" did not authorize disregard of the constitutional guaranty. Neither did "superior orders" condone the omission for they could not in any case be superior to the Constitution.

We do not find that the importance of the motorcycle in the prosecution of the criminal cases excused its seizure without a warrant. The authorities had enough time to comply with the required procedure but they did not do so, preferring the unconstitutional shortcut. The crime was committed on March 17, 1989, and the motorcycle was seized only on March 19, 1989, or two days later. During that period, the private respondent had all the

opportunity to apply for a search warrant and establish probable cause in accordance with the Bill of Rights and the Rules of Court. He did not.

The following observation in *Alih v. Castro*[3] is an appropriate reminder:

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.

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When the respondents could have easily obtained a search warrant from any of the TEN civil courts then open and functioning in Zamboanga City, they instead simply barged into the beleaguered premises on the verbal order of their superior officers. One cannot just force his way into any man's house on the illegal orders of a superior, however lofty his rank. Indeed, even the humblest hovel is protected from official intrusion because of the ancient rule, revered in all free regimes, that a man's house is his castle.

The mere mobility of the motorcycle did not make the search warrant redundant for it is not denied that the vehicle remained with the petitioner until it was forcibly taken from him. The fear that it would be dismantled or hidden was mere speculation that was not borne out by the facts. The extraordinary events cited in *People v. Court of First Instance of Rizal*[4] are not present in the case now before us. The necessity for the immediate seizure of the motorcycle without the prior obtention of a warrant has not been established.

The private respondent himself emphasizes that the petitioner had promised in the morning of March 19, 1989, to present the motorcycle in case it was needed during the investigation of the killings.[5] There was no reason to fear that it would be concealed by the petitioner, who presumably was under police surveillance at the time as one of the suspected killers. He could not have had that much opportunity to hide the vehicle even if he wanted to.

The private respondent maintains that by the petitioner's, promise, he effectively waived the right to a search warrant and so can no longer complain that the motorcycle had been invalidly seized. There was no such waiver. The petitioner merely agreed to cooperate with the investigators and to produce the vehicle when needed, but he did not agree to have it impounded. The record shows that he expressed reservations when this was suggested and said he needed the motorcycle for his official duties as a member of the Sangguniang Panlalawigan and in his private business.[6] At any rate, it has been shown that he was unwilling to surrender it at the time it was taken without warrant, and that made the taking unlawful.

In *Roan v. Gonzales*,[7] the Court said:

It is true that there are certain instances when a search may be validly made without warrant and articles may be taken validly as a result of that search. For example, a warrantless search may be made incidental to a lawful arrest, as when the person being arrested is frisked for weapons he may otherwise be able to use against the arresting officer. Motor cars may be inspected at borders to prevent smuggling of aliens and contraband and even in the interior upon a showing of probable cause. Vessels and aircraft are also traditionally removed from the operation of the rule because of their mobility and their relative ease in fleeing the state's jurisdiction. The individual may knowingly agree to be searched or waive objections to an illegal search. And it has also been held that prohibited articles may be taken without warrant if they are open to eye and hand and the peace officer comes upon them inadvertently.

The case at bar does not come under any of the above specified exceptions. The warrantless seizure of the

motorcycle was unquestionably violative of "the right to be let alone" by the authorities as guaranteed by the Constitution. The vehicle cannot even be detained on the ground that it is a prohibited article the mere possession of which is unlawful.

In dismissing Civil Case No. 3878, the respondent judge said he had no jurisdiction over the motorcycle because it was in custodia legis and only the judge trying the criminal cases against the petitioner and his co-accused could order its release. He cited the general doctrine that:

Property seized in enforcing criminal laws is in the custody of the law and cannot be replevied, until such custody is ended.[8]

It is true that property held as evidence in a criminal case cannot be replevied. But the rule applies only where the property is lawfully held, that is, seized in accordance with the rule against warrantless searches and seizures or its accepted exceptions. Property subject of litigation is not by that fact alone in custodia legis.[9] As the Court said in *Tamisin v. Odejar*,[10] "A thing is in custodia legis when it is shown that it has been and is subjected to the official custody of a judicial executive officer in pursuance of his execution of a legal writ." Only when property is lawfully taken by virtue of legal process is it considered in the custody of the law, and not otherwise.[11]

The circumstance that Judge Fernandez ordered the motorcycle to be deposited with the clerk of court on motion of the petitioner did not place the vehicle in custodia legis. The respondent judge had no authority over it because it had not been lawfully seized nor had it been voluntarily surrendered to the court by the petitioner. The private respondent observed in his comment that "it is only when the exhibits are offered in evidence and admitted by the court that they are submitted to the custody of the Court, and, before that, "they are usually in the possession of the prosecution." Even he agrees therefore that the motorcycle is not in custodia legis.

At that, the vehicle in the case at bar is not admissible as an exhibit even if offered as such because it is "the fruit of the poisonous tree." Under Article III, Sec. 3(2) "any evidence obtained in violation" of the rule against unreasonable searches and seizure "shall be inadmissible for any purpose in any proceeding."

Our finding is that the action to recover the motorcycle in the Regional Trial Court of Masbate will not constitute interference with the processes of the Regional Trial Court of Makati and that, consequently, the complaint should not have been dismissed by the respondent judge.

The Judiciary is as anxious as the rest of the government that crime be prevented and, if committed, redressed. There is no question that the person who violates the law deserves to be punished to the full extent that the attendant circumstances will allow. But the prosecution of the suspected criminal cannot be done with high-handedness or prejudgment, in disregard of the very laws we are supposed to uphold. Zeal in the pursuit of criminals cannot ennoble the use of arbitrary methods that the Constitution itself abhors.

WHEREFORE, the order of the respondent judge dated October 12, 1990, is SET ASIDE and Civil Case No. 3878 is REINSTATED for further proceedings. No costs.

SO ORDERED.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.
Gancayco, J., on leave.

[1] Rollo, p. 67.

[2] Constitutional Limitations.

[3] 151 SCRA 279.

[4] 101 SCRA 86.

[5] Rollo, p. 60.

[6] Ibid.

[7] 145 SCRA 687.

[8] 77 C.J.S. 28.

[9] Auyong Hian vs. Court of Tax Appeals, 59 SCRA 110.

[10] 108 Phil. 560.

[11] Auyong Hian vs. Court of Tax Appeals, *supra*.

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