

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO DE GRACIA, CHITO HENSON AND JOHN DOES, ACCUSED. ROLANDO DE GRACIA, ACCUSED-APPELLANT.

G.R. Nos. 102009-10. July 06, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

The incidents involved in this case took place at the height of the coup d'etat staged in December, 1989 by ultra-rightist elements headed by the Reform the Armed Forces Movement-Soldiers of the Filipino People (RAM-SFP) against the Government. At that time, various government establishments and military camps in Metro Manila were being bombarded by the rightist group with their "tora-tora" planes. At around midnight of November 30, 1989, the 4th Marine Battalion of the Philippine Marines occupied Villamor Air Base, while the Scout Rangers took over the Headquarters of the Philippine Army, the Army Operations Center, and Channel 4, the government television station. Also, some elements of the Philippine Army coming from Fort Magsaysay occupied the Greenhills Shopping Center in San Juan, Metro Manila.[1]

Accused-appellant Rolando de Gracia was charged in two separate informations for illegal possession of ammunition and explosives in furtherance of rebellion, and for attempted homicide, docketed as Criminal Cases Nos. Q-90--11755 and Q-90-11756, respectively, which were tried jointly by the Regional Trial Court of Quezon City, Branch 103.

In Criminal Case No. Q-90-11755, Rolando de Gracia, Chito Henson and several John Does whose true names and identities have not as yet been ascertained, were charged with the crime of illegal possession of ammunition and explosives in furtherance of rebellion, penalized under Section 1, paragraph 3, of Presidential Decree No. 1866, allegedly committed as follows:

"That on or about the 5th day of DECEMBER, 1989, in QUEZON CITY, METRO MANILA, PHILIPPINES, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, and without authority of law, did then and there willfully, unlawfully, feloniously and knowingly have in their possession, custody and control, the following to wit:

Five (5) bundles of C-4 or dynamites

Six (6) cartoons of M-16 ammunition at 20 each

One hundred (100) bottles of MOLOTOV bombs

without first securing the necessary license and/or permit to possess the same from the proper authorities, and armed with said dynamites, ammunition and explosives and pursuant to their conspiracy heretofore agreed upon by them and prompted by common designs, come to an agreement and decision to commit the crime of rebellion, by then and there participating therein and publicly taking arms against the duly constituted authorities, for the purpose of overthrowing the Government of the Republic of the Philippines, disrupting and

jeopardizing its activities and removing from its allegiance the territory of the Philippines or parts thereof." [2]

In Criminal Case No. Q-90-11756, Rolando de Gracia, Chito Henson, Lamberto Bicus, Rodolfo Tor and several John Does were charged with attempted homicide allegedly committed on December 1, 1989 in Quezon City upon the person of Crispin Sagario who was shot and hit on the right thigh.

Appellant was convicted for illegal possession of firearms in furtherance of rebellion, but was acquitted of attempted homicide.

During the arraignment, appellant pleaded not guilty to both charges. However, he admitted that he is not authorized to possess any firearms, ammunition and/or explosive. [3] The parties likewise stipulated that there was a rebellion during the period from November 30 up to December 9, 1989. [4]

The records show that in the early morning of December 1, 1989, Maj. Efren Soria of the Intelligence Division, National Capital Region Defense Command, was on board a brown Toyota car conducting a surveillance of the Eurocar Sales Office located at Epifanio de los Santos Avenue in Quezon City, together with his team composed of Sgt. Crispin Sagario, M/Sgt. Ramon Briones, S/Sgt. Henry Aquino, one S/Sgt. Simon and a Sgt. Ramos. The surveillance, which actually started on the night of November 30, 1989 at around 10:00 P.M., was conducted pursuant to an intelligence report received by the division that said establishment was being occupied by elements of the RAM-SFP as a communication command post.

Sgt. Crispin Sagario, the driver of the car, parked the vehicle around ten to fifteen meters away from the Eurocar building near P. Tuazon Street, S/Sgt. Henry Aquino had earlier alighted from the car to conduct his surveillance on foot. A crowd was then gathered near the Eurocar office watching the on-going bombardment near Camp Aguinaldo. After a while, a group of five men disengaged themselves from the crowd and walked towards the car of the surveillance team. At that moment, Maj. Soria, who was then seated in front, saw the approaching group and immediately ordered Sgt. Sagario to start the car and leave the area. As they passed by the group, then only six meters away, the latter pointed to them, drew their guns and fired at the team, which attack resulted in the wounding of Sgt. Sagario on the right thigh. Nobody in the surveillance team was able to retaliate because they sought cover inside the car and they were afraid that civilians or bystanders might be caught in the cross-fire.

As a consequence, at around 6:30 A.M. of December 5, 1989, a searching team composed of F/Lt. Virgilio Babao as team leader, M/Sgt. Lacdao, Sgt. Magallion, Sgt. Patricio Pacatang, and elements of the 16th Infantry Battalion under one Col. delos Santos raided the Eurocar Sales Office. They were able to find and confiscate six cartons of M-16 ammunition, five bundles of C-4 dynamites, M-shells of different calibers, and "molotov" bombs inside one of the rooms belonging to a certain Col. Matillano which is located at the right portion of the building. Sgt. Oscar Obenia, the first one to enter the Eurocar building, saw appellant De Gracia inside the office of Col. Matillano, holding a C-4 and suspiciously peeping through a door. De Gracia was the only person then present inside the room. A uniform with the nametag of Col. Matillano was also found. As a result of the raid, the team arrested appellant, as well as Soprieso Verbo and Roberto Jimena who were janitors at the Eurocar building. They were then made to sign an inventory, written in Tagalog, of the explosives and ammunition confiscated by the raiding team. No search warrant was secured by the raiding team because, according to them, at that time there was so much disorder considering that the nearby Camp Aguinaldo was being mopped up by the rebel forces and there was simultaneous firing within the vicinity of the Eurocar office, aside from the fact that the courts were consequently closed. The group was able to confirm later that the owner of Eurocar office is a certain Mr. Gutierrez and that appellant is supposedly a "boy" therein.

Appellant Rolando de Gracia gave another version of the incident. First, he claims that on November 30, 1989, he was in Antipolo to help in the birthday party of Col. Matillano. He denies that he was at the Eurocar Sales Office

on December 1, 1989. Second, he contends that when the raiding team arrived at the Eurocar Sales Office on December 5, 1989, he was inside his house, a small nipa hut which is adjacent to the building. According to him, he was tasked to guard the office of Col. Matillano which is located at the right side of the building. He denies, however, that he was inside the room of Col. Matillano when the raiding team barged in and that he had explosives in his possession. He testified that when the military raided the office, he was ordered to get out of his house and made to lie on the ground face down, together with "Obet" and "Dong" who were janitors of the building. He avers that he does not know anything about the explosives and insists that when they were asked to stand up, the explosives were already there.

Appellant stated that he visited Col. Matillano in 1987 at the stockade of the Philippine Constabulary-Integrated National Police (PC-INP), and that he knew Matillano was detained because of the latter's involvement in the 1987 coup d'etat. In July, 1989, appellant again went to see Matillano because he had no job. Col. Matillano then told him that he could stay in the PC-INP stockade and do the marketing for them. From that time until his arrest at the Eurocar office, appellant worked for Matillano.

De Gracia believes that the prosecution witnesses were moved to testify against him because "bata raw ako ni Col. Matillano eh may atraso daw sa kanila si Col. Matillano kaya sabi nila ito na lang bata niya ang ipitin natin."

On February 22, 1991, the trial court rendered judgment^[5] acquitting appellant Rolando de Gracia of attempted homicide, but found him guilty beyond reasonable doubt of the offense of illegal possession of firearms in furtherance of rebellion and sentenced him to serve the penalty of reclusion perpetua. Moreover, it made a recommendation that "(i)nasmuch as Rolando de Gracia appears to be merely executing or obeying orders and pursuant to the spirit contained in the 2nd paragraph of Art. 135, R.P.C., the court recommends that Rolando de Gracia be extended executive clemency after serving a jail term of five (5) years of good behavior."

That judgment of conviction is now challenged before us in this appeal.

Appellant principally contends that he cannot be held guilty of illegal possession of firearms for the reason that he did not have either physical or constructive possession thereof considering that he had no intent to possess the same; he is neither the owner nor a tenant of the building where the ammunition and explosives were found; he was merely employed by Col. Matillano as an errand boy; he was guarding the explosives for and in behalf of Col. Matillano; and he did not have actual possession of the explosives. He claims that intent to possess, which is necessary before one can be convicted under Presidential Decree No. 1866, was not present in the case at bar.

Presidential Decree No. 1866 provides as follows:

"SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearms, part of firearms, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed."

Presidential Decree No. 1866 was passed because of an upsurge of crimes vitally affecting public order and safety due to the proliferation of illegally possessed and manufactured firearms, ammunition and explosives, and which criminal acts have resulted in loss of human lives, damage to property and destruction of valuable resources of the

country. The series of coup d'etats unleashed in the country during the first few years of the transitional government under then President Corazon P. Aquino attest to the ever-growing importance of laws such as Presidential Decree No. 1866 which seek to nip in the bud and preempt the commission of any act or acts which tend to disturb public peace and order.

I. The first issue to be resolved is whether or not intent to possess is an essential element of the offense punishable under Presidential Decree No. 1866 and, if so, whether appellant De Gracia did intend to illegally possess firearms and ammunition.

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management.[6] This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatsoever.[7]

But is the mere fact of physical or constructive possession sufficient to convict a person for unlawful possession of firearms or must there be an intent to possess to constitute a violation of the law? This query assumes significance since the offense of illegal possession of firearms is a *malum prohibitum* punished by a special law,[8] in which case good faith and absence of criminal intent are not valid defenses.[9]

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.[10]

In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession, without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused.[11] Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon,[12] such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the *animus possidendi* is absent, there is no offense committed.

Coming now to the case before us, there is no doubt in our minds that appellant De Gracia is indeed guilty of having intentionally possessed several firearms, explosives and ammunition without the requisite license or authority therefor. Prosecution witness Sgt. Oscar Abenia categorically testified that he was the first one to enter the Eurocar Sales Office when the military operatives raided the same, and he saw De Gracia standing in the room and holding the several explosives marked in evidence as Exhibits D to D-4.[13] At first, appellant denied any knowledge about the explosives. Then, he alternatively contended that his act of guarding the explosives for and

in behalf of Col. Matillano does not constitute illegal possession thereof because there was no intent on his part to possess the same, since he was merely employed as an errand boy of Col. Matillano. His pretension of impersonal or indifferent material possession does not and cannot inspire credence.

Animus possidendi is a state of mind which may be determined on a case to case basis, taking into consideration the prior and coetaneous acts of the accused and the surrounding circumstances. What exists in the realm of thought is often disclosed in the range of action. It is not controverted that appellant De Gracia is a former soldier, having served with the Philippine Constabulary prior to his separation from the service for going on absence without leave (AWOL).[14] We do not hesitate, therefore, to believe and conclude that he is familiar with and knowledgeable about the dynamites, "molotov" bombs, and various kinds of ammunition which were confiscated by the military from his possession. As a former soldier, it would be absurd for him not to know anything about the dangerous uses and power of these weapons. A fortiori, he cannot feign ignorance on the import of having in his possession such a large quantity of explosives and ammunition. Furthermore, the place where the explosives were found is not a military camp or office, nor one where such items can ordinarily but lawfully be stored, as in a gun store, an arsenal or armory. Even an ordinarily prudent man would be put on guard and be suspicious if he finds articles of this nature in a place intended to carry out the business of selling cars and which has nothing to do at all, directly or indirectly, with the trade of firearms and ammunition.

On the basis of the foregoing disquisition, it is apparent, and we so hold, that appellant De Gracia actually intended to possess the articles confiscated from his person.

II. The next question that may be asked is whether or not there was a valid search and seizure in this case. While the matter has not been squarely put in issue, we deem it our bounden duty, in light of advertence thereto by the parties, to delve into the legality of the warrantless search conducted by the raiding team, considering the gravity of the offense for which herein appellant stands to be convicted and the penalty sought to be imposed.

It is admitted that the military operatives who raided the Eurocar Sales Office were not armed with a search warrant at that time.[15] The raid was actually precipitated by intelligence reports that said office was being used as headquarters by the RAM.[16] Prior to the raid, there was a surveillance conducted on the premises wherein the surveillance team was fired at by a group of men coming from the Eurocar building. When the military operatives raided the place, the occupants thereof refused to open the door despite requests for them to do so, thereby compelling the former to break into the Office.[17] The Eurocar Sales Office is obviously not a gun store and it is definitely not an armory or arsenal which are the usual depositories for explosives and ammunition. It is primarily and solely engaged in the sale of automobiles. The presence of an unusual quantity of high-powered firearms and explosives could not be justifiably or even colorably explained. In addition, there was general chaos and disorder at that time because of simultaneous and intense firing within the vicinity of the office and in the nearby Camp Aguinaldo which was under attack by rebel forces.[18] The courts in the surrounding areas were obviously closed and, for that matter, the building and houses therein were deserted.

Under the foregoing circumstances, it is our considered opinion that the instant case falls under one of the exceptions to the prohibition against a warrantless search. In the first place, the military operatives, taking into account the facts obtaining in this case, had reasonable ground to believe that a crime was being committed. There was consequently more than sufficient probable cause to warrant their action. Furthermore, under the situation then prevailing, the raiding team had no opportunity to apply for and secure a search warrant from the courts. The trial judge himself manifested that on December 5, 1989 when the raid was conducted, his court was closed.[19] Under such urgency and exigency of the moment, a search warrant could lawfully be dispensed with.

The view that we here take is in consonance with our doctrinal ruling which was amply explained in *People vs.*

Malmstedt[20] and bears reiteration:

"While it is true that the NARCOM officers were not armed with a search warrant when the search was made over the personal effects of accused, however, under the circumstances of the case, there was sufficient probable cause for said officers to believe that accused was then and there committing a crime.

"Probable cause has been defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by any fixed formula but is resolved according to the facts of each case.

"Warrantless search of the personal effects of an accused has been declared by this Court as valid, because of existence of probable cause, where the smell of marijuana emanated from a plastic bag owned by the accused, or where the accused was acting suspiciously, and attempted to flee.

"Aside from the persistent reports received by the NARCOM that vehicles coming from Sagada were transporting marijuana and other prohibited drugs, their Commanding Officer also received information that a Caucasian coming from Sagada on that particular day had prohibited drugs in his possession. Said information was received by the Commanding Officer of NARCOM the very same morning that accused came down by bus from Sagada on his way to Baguio City.

"When NARCOM received the information, a few hours before the apprehension of herein accused, that a Caucasian travelling from Sagada to Baguio City was carrying with him prohibited drugs, there was no time to obtain a search warrant. In the Tangliben case, the police authorities conducted a surveillance at the Victory Liner Terminal located at Bgy. San Nicolas, San Fernando, Pampanga, against persons engaged in the traffic of dangerous drugs, based on information supplied by some informers. Accused Tangliben who was acting suspiciously and pointed out by an informer was apprehended and searched by the police authorities. It was held that when faced with on-the-spot information, the police officers had to act quickly and there was no time to secure a search warrant.

"It must be observed that, at first, the NARCOM officers merely conducted a routine check of the bus (where accused was riding) and the passengers therein, and no extensive search was initially made. It was only when one of the officers noticed a bulge on the waist of accused, during the course of the inspection, that accused was required to present his passport. The failure of accused to present his identification papers, when ordered to do so, only managed to arouse the suspicion of the officer that accused was trying to hide his identity. For is it not a regular norm for an innocent man, who has nothing to hide from the authorities, to readily present his identification papers when required to do so?

"The receipt of information by NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession, plus the suspicious failure of the accused to produce his passport, taken together as a whole, led the NARCOM officers to reasonably believe that the accused was trying to hide something illegal from the authorities. From these circumstances arose a probable cause which justified the warrantless search that was made on the personal effects of the accused. In other words, the acts of the NARCOM officers in requiring the accused to open his pouch bag and in opening one of the wrapped objects found inside said bag (which was discovered to contain hashish) as well as the two (2) teddy bears with hashish stuffed inside them, were prompted by accused's own attempt to hide his identity by refusing to present his passport, and by the information received by the NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession. To deprive the NARCOM agents of the ability and facility to act accordingly, including, to search even without warrant, in the light of such circumstances, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society."

In addition, we find the principle enunciated in *Umil, et al. vs. Ramos, et al.*, [21] applicable, by analogy, to the present case:

"The arrest of persons involved in the rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but really in pursuance of the rebellious movement. The arrest or capture is thus impelled by the exigencies of the situation that involves the very survival of society and its government and duly constituted authorities. If killing and other acts of violence against the rebels find justification in the exigencies of armed hostilities which (are) of the essence of waging a rebellion or insurrection, most assuredly so in case of invasion, merely seizing their persons and detaining them while any of these contingencies continues cannot be less justified."

III. As earlier stated, it was stipulated and admitted by both parties that from November 30, 1989 up to and until December 9, 1989, there was a rebellion. Ergo, our next inquiry is whether or not appellant's possession of the firearms, explosives and ammunition seized and recovered from him was for the purpose and in furtherance of rebellion.

The trial court found accused guilty of illegal possession of firearms in furtherance of rebellion pursuant to paragraph 2 of Article 135 of the Revised Penal Code which states that "any person merely participating or executing the command of others in a rebellion shall suffer the penalty of prision mayor in its minimum period." The court below held that appellant De Gracia, who had been servicing the personal needs of Col. Matillano (whose active armed opposition against the Government, particularly at the Camelot Hotel, was well known), is guilty of the act of guarding the explosives and "molotov" bombs for and in behalf of the latter. We accept this finding of the lower court.

The above provision of the law was, however, erroneously and improperly used by the court below as a basis in determining the degree of liability of appellant and the penalty to be imposed on him. It must be made clear that appellant is charged with the qualified offense of illegal possession of firearms in furtherance of rebellion under Presidential Decree No. 1866 which, in law, is distinct from the crime of rebellion punished under Articles 134 and 135 of the Revised Penal Code. These are two separate statutes penalizing different offenses with discrete penalties. The Revised Penal Code treats rebellion as a crime apart from murder, homicide, arson, or other offenses, such as illegal possession of firearms, that might conceivably be committed in the course of a rebellion. Presidential Decree No. 1866 defines and punishes, as a specific offense, the crime of illegal possession of firearms committed in the course or as part of a rebellion.[22]

As a matter of fact, in one case involving the constitutionality of Section 1 of Presidential Decree No. 1866, the Court has explained that said provision of the law will not be invalidated by the mere fact that the same act is penalized under two different statutes with different penalties, even if considered highly advantageous to the prosecution and onerous to the accused.[23] It follows that, subject to the presence of the requisite elements in each case, unlawful possession of an unlicensed firearm in furtherance of rebellion may give rise to separate prosecutions for a violation of Section 1 of Presidential Decree No. 1866, and also a violation of Articles 134 and 135 of the Revised Penal Code on rebellion. Double jeopardy in this case cannot be invoked because the first is an offense punished by a special law while the second is a felony punished by the Revised Penal Code,[24] with variant elements.

It was a legal malapropism for the lower court to interject the aforestated provision of the Revised Penal Code in this prosecution for a crime under a special law. Consequently, there is no basis for its recommendation for

executive clemency in favor of appellant De Gracia after he shall have served a jail term of five years with good behavior. In any event, this is a matter within the exclusive prerogative of the President whose decision thereon should be insulated against any tenuous importunity.

Withal, we are duly convinced that the firearms, explosives and ammunition confiscated from appellant De Gracia were illegally possessed by him in furtherance of the rebellion then admittedly existing at that time. In the words of the court a quo:

"2. the nature and quantity of the items - 5 bundles of C-4 dynamites, 6 cartons of M-16 ammo and 100 bottles of molotov bombs indicate that the reports received by the military that the Eurocar Sales Building was being used by the rebels was not without basis. Those items are clearly not for one's personal defense. They are for offensive operations. De Gracia admitted that per instruction of Col. Matillano he went down to Eurocar Sales Building from Antipolo to stay guard there.

"His manifestation of innocence of those items and what he has been guarding in that office is not credible for: (a) he was a former military personnel; (b) at the birthday party of Col. Matillano on November 30, 1989 many soldiers and ex-soldiers were present which self-evidently discloses that De Gracia, in the company of his boss, was still very much at home and constantly in touch with soldiers and the armed rebellion of November 30, 1989 to December 8 or 9, 1989 was a military coup d'etat; (c) it appears that he is the only person tasked with caretaking (sic) there in the Matillano office, which shows that he is a highly trusted right-hand man of Col. Matillano; and (d) as heretofore discussed, de Gracia was earlier seen with some men who fired upon a car of the AFP intelligence agents." [25]

Presidential Decree No. 1866 imposes the death penalty where the illegal possession of firearms and ammunition is committed in furtherance of rebellion. At the time the offense charged in this case was committed under the governance of that law, the imposition of the death penalty was proscribed by the Constitution. Consequently, appellant De Gracia could only be sentenced to serve the penalty of reclusion perpetua which was correctly meted out by the trial court, albeit with an erroneous recommendation in connection therewith.

WHEREFORE, the impugned judgment of the trial court is hereby **AFFIRMED**, but its recommendation therein for executive clemency and the supposed basis thereof are hereby **DELETED**, with costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Puno, and Mendoza, JJ., concur.

[1] TSN, August 28, 1990, 40-42.

[2] Original Record, 1.

[3] Ibid., 52.

[4] Ibid., 97.

[5] Penned by Judge Jaime N. Salazar; Original Record, 146.

[6] People vs. Cruz, G.R. No. 76728, August 30, 1988, 165 SCRA 135; People vs. Fajardo, et al., 123 Phil. 1348 (1966).

[7] People vs. Estoista, 93 Phil. 647 (1953).

[8] Veroy, et al. vs. Layague, etc., et al., G.R. No. 95630, June 18, 1992, 210 SCRA 97.

- [9] *People vs. Neri*, G.R. No. L-37762, December 19, 1985, 140 SCRA 406.
- [10] Reyes, *The Revised Penal Code*, Book One, 1981, 12th ed., 53.
- [11] *People vs. Soyang, et al.*, 110 Phil. 565 (1960); *People vs. Lubo, et al.*, 101 Phil. 179 (1957); *U.S. vs. Samson*, 16 Phil. 323 (1910).
- [12] *People vs. Estoista*, *supra*, Fn. 7.
- [13] TSN, November 22, 1990, 12.
- [14] *Ibid.*, December 6, 1990, 36.
- [15] *Ibid.*, November 22, 1990, 33.
- [16] *Ibid.*, October 2, 1990, 21-22.
- [17] *Ibid.*, *id.*, November 22, 1990, 8.
- [18] *Ibid.*, *id.*, October 2, 1990, 16-17.
- [19] *Ibid.*, November 29, 1990, 58.
- [20] G.R. No. 91107, June 19, 1991, 198 SCRA 401.
- [21] G.R. No. 81567, July 9, 1990, 187 SCRA 311.
- [22] *Baylosis, et al. vs. Chavez, Jr., et al.*, G.R. No. 95136, October 3, 1991, 202 SCRA 405.
- [23] *Misolas vs. Panga, etc. et al.*, G. R. No. 83341, January 30, 1990, 181 SCRA 648.
- [24] *Cf. People vs. Tiozon*, G.R. No. 89823, June 19, 1991, 198 SCRA 368.
- [25] Original Record, 149-150.

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