

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WALPAN LADJAALAM Y MIHAJIL ALIAS “WARPAN,” APPELLANT.

G.R. Nos. 136149-51. September 19, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Republic Act No. 8294 penalizes simple illegal possession of firearms, provided that the person arrested committed “no other crime.” Furthermore, if the person is held liable for murder or homicide, illegal possession of firearms is an aggravating circumstance, but not a separate offense. Hence, where an accused was convicted of direct assault with multiple attempted homicide for firing an unlicensed M-14 rifle at several policemen who were about to serve a search warrant, he cannot be held guilty of the separate offense of illegal possession of firearms. Neither can such unlawful act be considered to have aggravated the direct assault.

The Case

Walpan Ladjaalam y Mihajil, also known as “Warpan,” appeals before us the September 17, 1998 Decision[1] of the Regional Trial Court (RTC) of Zamboanga City (Branch 16), which found him guilty of three out of the four charges lodged against him.

Filed against appellant were four Informations,[2] all signed by Assistant Regional State Prosecutor Ricardo G. Cabaron and dated September 25, 1997. The first Information[3] was for maintaining a den for the use of regulated drugs. It reads as follows:

“That on or about September 24, 1997, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Walpan Ladjaalam being then the owner of a residential house located at Rio Hondo,[4] this City, conspiring and confederating together, mutually aiding and assisting x x x his co-accused wife Nur-in Ladjaalam and Ahmad Sailabbi y Hajaraini, did then and there wilfully, unlawfully and feloniously, maintain said house as a den, where regulated drug [was] used in any form.”[5]

The second Information[6] charged appellant with illegal possession of firearms and ammunition. We quote it below:

“That on or about September 24, 1997, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually aiding and assisting with one another, without any justifiable reason or purpose other than to use it in the commission of crime, did then and there, wilfully, unlawfully, and feloniously have in their possession and under their custody and control, the following weapons, to wit: one (1) M14 rifle with SN 1555225 with magazines and seven (7) rounds of live ammunition; two (2) magazines with twenty (20) and twenty[-one] (21) rounds of live [ammunition]; one (1) homemade caliber .38 revolver with five (5) live ammunition; one (1) M-79 (single) rifle with pouch and with five (5) empty shell[s]; one (1) home made caliber .38 with SN-311092 with five live ammunition and one empty shell of [a] cal. 38 x x x Smith and Wesson; two (2) .38 Caliber paltik revolver with Serial Number 311092 and one defaced M79 grenade launcher paltik, without first having obtained the necessary license and or permit therefor from authorities concerned, in flagrant violation of the aforementioned

law.”[7]

The third Information,[8] for multiple attempted murder with direct assault, was worded thus:

“That on or about September 24, 1997, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with M-14 Armalite Rifles, M-16 Armalite Rifles and other assorted firearms and explosives, conspiring and confederating together, mutually aiding and assisting x x x one another and with intent to kill, did then and there wilfully, unlawfully and feloniously try and attempt to kill SPO1 WILLIAM B. JONES, JR., PO3 ENRIQUE C. RIVERA[,] SPO1 AMADO A. MIRASOL, JR., and SPO1 RICARDO J. LACASTESANTOS, in the following manner, to wit: by then and there firing their M-14 x x x Armalite Rifles, M-16 Armalite Rifles and other assorted firearms and explosives, aimed and directed at the fatal parts of the bodies of the above-named police officers, well known to the accused as members of the Philippine National Police, Zamboanga City Police Office, and as such, agents of a person in authority, who at the time of the attack were engaged in the performance of their duties, that is, on the occasion when said officers were about to serve the Search Warrant legally issued by the Regional Trial Court, this City, to the person of the accused thus commencing the commission of crime of multiple murder directly by overt acts, and if the accused did not accomplish their unlawful purpose, that is, to kill the above-named Police Officers, it was not by reason of their own voluntary desistance but rather because of the fact that all the above-named police officers were able to seek cover during the firing and were not hit by the bullets and explosives fired by the accused and also by the fact said police officers were able to wrestle with two (2) of the accused namely: Walpan Ladjaalam y Mihajil a.k.a. ‘Warpan’ and Ahmad Sailabbi y Hajairani, who were subdued and subsequently placed under arrest; whereas accused PO2 Nurhakim T. Hadjula was able to make good his escape and has remained at-large.”[9]

In the fourth Information, appellant was charged with illegal possession of drugs.[10]

On December 21, 1997, the cases against Nur-in Ladjaalam and Ahmad Sailabbi y Hajaraini were dismissed upon motion of the Office of the City Prosecutor, which had conducted a reinvestigation of the cases as ordered by the lower court. The accused were consequently released from jail.

The arraignment of appellant on all four (4) charges took place on January 6, 1998, during which he entered a plea of not guilty.[11] After pretrial, the assailed Decision was rendered, the dispositive part of which reads:

“WHEREFORE, the Court finds accused WALPAN LADJAALAM y MIHAJIL a.k.a. ‘WARPAN’ -

“1. in Criminal Case No. 14636, GUILTY BEYOND REASONABLE DOUBT of Violation of Section 15-A, Article III, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and SENTENCES said accused to the penalty of RECLUSION PERPETUA and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) and to pay the costs;

“2. In Criminal Case No. 14637, NOT GUILTY of Violation of Section 16, Article III, in relation to Section 21, Article IV, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and ACQUITS him of said crime with costs de officio;

“3. in Criminal Case No. 14638, GUILTY BEYOND REASONABLE DOUBT of the crime of Illegal Possession of Firearm and Ammunition penalized under Presidential Decree No. 1866, as amended by Republic Act. No. 8294, and SENTENCES said accused to suffer an indeterminate penalty of SIX (6) YEARS of prision correccional as minimum to EIGHT (8) YEARS of prision mayor as maximum and to pay a fine [of] THIRTY THOUSAND (P30,000.00) and pay the costs;

“4. in Criminal Case No. 14639, GUILTY BEYOND REASONABLE DOUBT of the crime of Direct Assault with Multiple Attempted Homicide and SENTENCES said accused to an indeterminate penalty of TWO (2) YEARS and FOUR (4) MONTHS of prision correccional as minimum to SIX (6) YEARS of prision

correccional as maximum and to pay a fine of ONE THOUSAND (P1,000.00) and to pay the costs.” (emphasis in the original)

Hence, this appeal.[12]

The Facts

Prosecution’s Version

In its Brief,[13] the Office of the Solicitor General presents the facts in this wise:

“At 1:45 p.m. of September 24, 1997, PO3 Allan Marcos Obut filed an application for the issuance of a search warrant against appellant, his wife and some John Does (Exh. C). After the search warrant was issued about 2:30 p.m. of the same day, a briefing was conducted inside the office of the Anti-Vice/Narcotics Unit of the Zamboanga City Police Office in connection with the service of the search warrant. The briefing was conducted by SPO2 Felipe Gaganting, Chief of the Anti-Vice/Narcotics Unit. During the briefing, PO3 Renato Dela Peña was assigned as presenter of the warrant. SPO1 Ricardo Lacastesantos and PO3 Enrique Rivera were designated to conduct the search. Other policemen were assigned as perimeter guards (TSN, March 3, 1998, pp. 33-36).

“After the briefing, more than thirty (30) policemen headed by Police Superintendent Edwin Soledad proceeded to the house of appellant and his wife at Rio Hondo on board several police vehicles (TSN, March 4, 1998, p. 32; April 22, 1998, p. 54). Before they could reach appellant’s house, three (3) persons sitting at a nearby store ran towards the house shouting, ‘[P]olice, raid, raid’ (Ibid., March 3, 1998, pp. 41, 43-44; April 23, 1998, p. 4). When the policemen were about ten (10) meters from the main gate of the house, they were met by a rapid burst of gunfire coming from the second floor of the house. There was also gunfire at the back of the house (Ibid., March 5, 1998, pp. 14-16).

“SPO1 Mirasol, SPO2 Lacastesantos, PO3 Rivera, and PO3 Dela Peña who were with the first group of policemen saw appellant fire an M14 rifle towards them. They all knew appellant. When they were fired upon, the group, together with SPO2 Gaganting, PO3 Obut and Superintendent Soledad, sought cover at the concrete fence to observe the movements at the second floor of the house while other policemen surrounded the house (Ibid., March 4, 1998, pp. 50-51).

“In front of the house was an extension building connected to the concrete fence (Ibid., pp. 45-46, 57-59, 73-76). Gaganting, Mirasol, Lacastesantos, Gregorio, and Obut entered the door of the extension building. Gaganting opened the main (steel) gate of the house. The other members of the team then entered. Lacastesantos and Mirasol entered the house through the main door and went inside the sala of the ground floor while other policemen surrounded the house. Two (2) old women were in the sala together with a young girl and three (3) children. One of the old women took the children to the second floor while the young girl remained seated at the corner (Ibid., pp. 19-21).

“Lacastesantos and Mirasol proceeded to the second floor where they earlier saw appellant firing an M14 rifle at them through the window. While they were going upstairs, appellant noticed their presence. He went inside the bedroom and, after breaking and removing the jalousies, jumped from the window to the roof of a neighboring house. Seeing this, Mirasol rushed downstairs and asked help from the other members of the raiding team to arrest appellant. Lacastesantos went to the second floor and shouted to the policemen outside not to fire in the direction of the second floor because there were children. Mirasol and SPO1 Cesar Rabuya arrested appellant at the back of his house after a brief chase (Ibid., pp. 21-23).

“At the second floor, Lacastesantos saw an M14 rifle (Exh. B-3) with magazine on top of the sofa at the sala on the second floor (Ibid., P. 27). The rifle bore Serial No. 1555225. He removed the magazine from the rifle and the bullet inside the chamber of the rifle. He counted seventeen (17) live ammunition inside the magazine. He saw two (2) more M14 rifle magazines on the sofa, one with twenty (20) live ammunition (Exh. G-3) and

another with twenty-one (21) live ammunition (Exh. G-4). He likewise saw three (3) M16 rifle magazines (Exh. G-2) in a corner at the second floor (TSN, March 5, 1998, pp. 23-32, 53-57).

“After Lacastesantos and Mirasol entered appellant’s house, Rivera, Dela Peña, Gregorio and Obut followed and entered the house. After identifying themselves as members of the PNP Anti-Vice/Narcotics Unit, Obut presented to the old woman a copy of the search warrant. Dela Peña and Rivera then searched appellant’s room on the ground floor in the presence of Punong Barangay Elhano (TSN, March 3, 1998, pp. 41-43). On top of a table was a pencil case (Exh. J) with fifty (50) folded aluminum foils inside (Exhs. J-1 to J-50), each containing methamphetamine hydrochloride or ‘shabu’.

“Other items were found during the search, namely, assorted coins in different denominations (Exh. W; TSN, April 28, 1998, pp. 23-25), one (1) homemade .38 caliber revolver (Exh. B-2) with five (5) live [ammunition], one (1) M79 single rifle with [a] pouch containing five (5) empty shells of an M79 rifle (Exh. B-4), and one (1) empty shell of an M14 rifle (TSN, April 23, 1998, pp. 30-32).

“Rino Bartolome Locson was an informer of the Anti-Vice/Narcotics Unit of the Zamboanga Police. [O]n the morning of September 24, 1997, he was instructed by SPO2 Gaganting to go to appellant’s house to buy ‘shabu.’ Locson knew appellant as a seller of ‘shabu’ (TSN, April 22, 1998, p. 5) and had been to appellant’s house about fifteen (15) times before. He went to Rio Hondo and arrived at appellant’s house at 3:20 p.m. He bought P300.00 worth of ‘shabu’ from appellant. The latter got three (3) decks of shabu from his waist bag. Appellant instructed Locson to go behind the curtain where there was a table. There were six (6) persons already smoking. There was a lighted kerosene lamp made of a medicine bottle placed on the table. They asked Locson to smoke ‘shabu’ and Locson obliged. He placed the three (3) decks of ‘shabu’ he bought on the table (Ibid., pp. 8-15).

“While they were smoking ‘shabu,’ Locson heard gunfire coming from appellant’s house. They all stood and entered appellant’s compound but were instructed to pass [through] the other side. They met appellant at the back of his house. Appellant told them to escape ‘because the police are already here.’ They scampered and ‘ran away because there were already shots.’ Locson jumped over the fence and ran towards the seashore. Upon reaching a place near the Fisheries School, he took a tricycle and went home (Ibid., pp. 17-19).

“The following day, September 25, 1997, he went to the police station and executed an affidavit (Exh. M) narrating what transpired at appellant’s house [o]n the afternoon of September 24, 1997.

“After the search and before returning to the police station, P03 Dela Peña prepared a ‘Receipt for Property Seized’ (Exh. P & 3) listing the properties seized during the search. The receipt was signed by Dela Peña as the seizure officer, and by Punong Barangay Hadji Hussin Elhano and radio reporter Jun Cayona as witnesses. A copy of the receipt was given to appellant but he refused to acknowledge the properties seized (TSN, April 23, 1998, pp. 11-12).

“An examination conducted by Police Inspector Mercedes D. Diestro, Forensic Chemist of the PNP Crime Laboratory Service Office 9, on the paraffin casts taken from both hands of appellant yielded positive for gunpowder nitrates (Exh. A-3), giving rise to the possibility that appellant had fired a gun before the examination (TSN, March 3, 1998, p. 11). Gunpowder residue examinations conducted on September 26, 1997 showed that the following firearms ‘were fired’ (Exh. B-5): a .38 caliber revolver (homemade) with Serial No. 311092 (Exh. B-1), another .38 caliber revolver (homemade) without a serial number (Exh. B-2), a Cal. 7.62 mm M14 U.S. rifle with Serial No. 1555225 (Exh. B-3), and an M79 rifle without a serial number (Exh. B-4). They were fired within five (5) days prior to the examination (TSN, March 3, 1998, pp. 16-21).

“With respect to the crystalline substances, an examination conducted by Police Inspector Susan M. Cayabyab, likewise a Forensic Chemist of the PNP Crime Laboratory Service Office 9, on the fifty (50) pieces of folded aluminum foils each containing white crystalline granules with a total weight of 1.7426 grams (Exh. J-1 to J-50) yielded positive results for the presence of methamphetamine hydrochloride (shabu) (Exh. L). However,

the examination of one (1) crystalline stone weighing 83.2674 grams (Exh. K) yielded negative results for the presence of methamphetamine hydrochloride (Exh. L).

“The records of the Regional Operation and Plans Division of the PNP Firearm and Explosive Section show that appellant ‘had not applied/filed any application for license to possess firearm and ammunition or x x x been given authority to carry [a] firearm outside of his residence’ (Exh. X)”[14]

Defense’s Version

Appellant Ladjaalam agrees with the narration of facts given by the lower court.[15] Hence, we quote the pertinent parts of the assailed Decision:

“Accused Walpan Ladjaalam y Mihajil a.k.a. ‘Warpan’, 30 years old, married, gave his occupation as ‘smuggling’ (tsn, p. 2, May 4, 1998). He used to go to Labuan in Malaysia and bring cigarettes to the Philippines without paying taxes (tsn, pp. 40-41, id). He said that his true name [was] Abdul Nasser Abdurakman and that Warpan or Walpan Ladjaalam [was] only his ‘alias’. However, he admitted that more people kn[e]w him as Walpan Ladjaalam rather than Abdul Nasser Abdurakman (tsn, pp. 39-40; 46-47, id). He testified that [o]n the afternoon of September 24, 1997, when he was arrested by the police, he was sleeping in the house of Dandao, a relative of his wife. He was alone. He slept in Dandao’s house and not in his house because they ha[d] ‘a sort of a conference’ as Dandao’s daughter was leaving for Saudi Arabia. He noticed the presence of policemen in his neighborhood at Aplaya, Rio Hondo when he heard shots. He woke up and went out of the house and that was the time that he was arrested. He said he was arrested ‘xxx [at] the other side of my house; at the other side of the fence where I was sleeping. xxx. At the back of my house’ (tsn, p. 7, id.). He does not know who arrested him ‘considering that the one who arrested me does not have nameplate.’ He was arrested by four (4) persons. Not one of those who arrested him testified in Court. He was handcuffed and placed inside a jeep parked at Rio Hondo Elementary School. According to him, he did not fire a gun at the policemen from [t]he second floor of his house. He said the ‘policemen’ [were] ‘the one[s] who fire[d] at us’ (tsn, p. 5, id.). If he fired a gun at the policemen for sure they [would] die ‘[b]ecause the door is very near x x x the vicinity of my house’. He does not own the M14 rifle (Exh. ‘B-3’) which according to policemen, he used in firing at them. The gun does not belong to him. He does not have a gun like that (tsn, p. 15, id.). A policeman also owns an M14 rifle but he does not know the policeman (tsn, pp. 16-17, id). He said that the M79 rifle (Exh. ‘B-4’), the three (3) empty M16 rifle magazines (Exh. ‘G’; ‘G-1’ to ‘G-2’), the two (2) M14 magazines with live ammunition (Exh. ‘G-3’; ‘G-4’); the two (2) caliber .38 revolvers (Exhs. ‘B-1’; ‘B-2’), the fifty (50) aluminum foils each containing shabu (Exhs. ‘J-1’ to ‘J-50’) placed inside a pencil case (Exh. ‘J’), the assorted coins placed inside a blue bag (Exh. ‘W’) and the white crystalline stone (Exh. ‘K’) all do not belong to him. He said that the policemen just produced those things as their evidence. The firearms do not belong to him. They were brought by the policemen (tsn, p. 43, May 4, 1998). Regarding the blue bag containing assorted coins, he said: ‘that is not ours, I think this (is) theirs, xxx they just brought that as their evidence’ (tsn, pp. 15-24, id.)

“Walpan Ladjaalam declared there were occupants who were renting his extension house. He affirmed that he owns that house. Four (4) persons were staying in the extension house. He could only recognize the husband whose name is Momoy. They are from Jolo. They left the place already because they were afraid when the police raided the place. (tsn, pp. 8-10, May 4, 1998). He does not know prosecution witness Rino Locson y Bartolome. Although Locson recognized him, in his case he does not know Locson and he does not recognize him (tsn, p.11, id). He did not sell anything to Locson and did not entertain him. He is not selling shabu but he knows ‘for a fact that there are plenty of person who are engaged in selling shabu in that place’, in that area known as Aplaya, Rio Hondo. One of them is Hadji Agbi (tsn, pp.11-14, id).

“After his arrest Walpan Ladjaalam was brought to the police station where he stayed for one day and one night before he was transferred to the City jail. While at the police station, he was not able to take a bath. He smokes two packs of cigarette a day. While he was at the police station, he smoked [a] cigarette given to him

by his younger sister. He lighted the cigarettes with [a] match. From the police station, he was brought to the PNP Regional Office at R.T. Lim Boulevard where he was subject to paraffin examination (tsn, pp. 24-26, May 4, 1998).

“During the raid conducted on his house, his cousin Boy Ladjaalam, Ating Sapadi, and Jecar (Sikkal) Usman, the younger brother of his wife were killed. Walpan Ladjaalam said that he saw that ‘it was the policeman who shot them[,] only I do not know his name.’ They were killed at the back of his house. He said that no charges were filed against the one responsible for their death (tsn, pp. 30-33- May 4, 1998).

“Anilhawa Ahamad, more or less 80 years old, a widow was in the house of Walpan Ladjaalam whom he calls ‘Hadji Id’ at the time the police raided the house. She is the mother of Ahma Sailabbi. She was together with Babo Dandan, two small children and a helper when ‘soldiers’ entered the house. ‘(W)hen they arrived, they kept on firing (their guns) even inside the house’ (tsn, p.5, May 5, 1998). They were armed with short and long firearms. They searched the house and scattered things and got what they wanted. They entered the room of Walpan Ladjaalam. They tried to open a bag containing jewelry. When Anilhawa tried to bring the bag outside the room, they grabbed the bag from her and poked a gun at her. At that time Walpan Ladjaalam was not in the house. Ahamad Sailabbi was also not in the house. A Search Warrant was shown to Anilhawa after the search was conducted and just before the policemen left the place. Anilhawa Ahamad said that ‘it was already late in the afternoon[;] before they left that was the time the Search Warrant (was) given to us by xxx Barangay Captain Hussin Elhano’ (tsn, pp.6-8, May 5, 1998). Barangay Chairman Elhano arrived ‘already late in the afternoon, almost sundown’ (tsn, p. 9, id). Anilhaw declared that aside from a bag containing jewelry and a bag full of money, she had not seen anything else that was taken from Walpan Ladjaalam’s house (tsn, pp. 9-12, id).

“Akmad (Ahmad) Sailabbi, 37 years old, married testified that about 4:00 o’clock [o]n the afternoon of September 24, 1997, ha was standing in front of his house when policemen arrived and immediately arrested him. He was about to go to the City Proper to buy articles he was intending to bring to Sabah. He had ‘around P50,000.00’ placed inside a waist bag tied around his waist. The policemen told him to lie down in prone position and a policeman searched his back. They pulled his waist bag and took his DiaStar wrist watch. He was shot three times and was hit on the forehead leaving a scar. His injury was not treated. He was taken to the police station where he was detained for one day and one night. He was detained at the City Jail for three months and five days after which he was released (tsn, pp. 25-29, May 5, 1998).

“Melba Usma, 20 years old, a widow, testified that [o]n the afternoon of September 24, 1997, she was in the house of her parents lying together with her husband Sikkal Usma. There is only one house between her parents’ house and the house of Walpan Ladjaalam. Her husband Sikkal Usman is the brother of Nur-in Ladjaalam, Walpan’s wife. When Melba heard shots, she went downstairs. A policeman was looking for her husband. The policeman called her husband. When her husband went down, he was instructed by the policeman to lie down in prone position. Then the policeman shot her husband. The policeman had two other companions who also shot her husband while he was lying down in prone position (tsn, pp.2-7, May 5, 1998).

“Murkisa Usman, 30 years old, married, declared that [o]n the afternoon of September 24, 1997, she was sitting at the door of her house watching her children playing when a motorcycle, driven by a person, stopped near her house. The driver was Gaganting whom she called a soldier. He went down from his motorcycle, pulled a gun and poked it at Murkisa. Murkisa stood up and raised her hands. She got her children and when she was about to enter the room of her house, Gaganting again poked a gun at her and ‘there was a shot.’ As a result of firing, three persons died, namely, Sikkal Usman, Boy Ladjaalam and Atip Sapali Sali (tsn, pp. 8-10, May 5, 1998).

“Barangay Captain Hadji Hussin Elhano, 51 years old, testified that about 4:00 o’clock [o]n the afternoon of September 24, 1997, he was fetched by two policemen at Catabangan where he was attending a seminar. Because of traffic along the way, they arrived at the Rio Hondo already late in the afternoon. He saw

policemen were already inside the house. Upon entering the gate, he saw Walpan at the gate already handcuffed. Walpan called him but the police advised him not to approach Walpan. The search was already over and things were already taken inside the house. When he went inside the house, he saw ‘the things that they (policemen) searched, the firearms and the shabu’ (tsn, p. 17. May 8, 1998). He did not see the Search Warrant. What was shown to him were the things recovered during the search which were being listed. They were being counted and placed on a table. ‘Upon seeing the things that were recovered during the search, I just signed the receipt (Exh. “P”; “P-1”) of the things x x x taken during the search’ (tsn, pp. 17-18. May 8, 1998). He saw three dead bodies at the side of the fence when he went to the other side of the house. The three persons were killed outside the fence of Walpan Ladjaalam (tsn, p. 18, id).”[16]

The Trial Court’s Ruling

The trial court observed that the house of appellant was raided on September 24, 1997 by virtue of Search Warrant No. 20 issued on the same day. However, the lower court nullified the said Warrant because it had been issued for more than one specific offense,[17] in violation of Section 3, Rule 126 of the Rules of Court.[18] The court a quo ruled:

“It should be stated at the outset that Search Warrant No. 20 is totally ‘null and void’ because it was issued for more than one specific offense x x x contrary to Section 3, Rule 1[2]6 of the Rules of Court which provides that ‘A search warrant shall not issue but upon probable cause in connection with one specific offense xxx’. In *Tambasan vs. People*, 246 SCRA 184 (1995), the Supreme Court ruled that a search warrant for more than one offense - a ‘scatter shot warrant’ - violates Section 3, Rule 126 of the [R]evised Rules of Court and is ‘totally null and void.’”[19] (emphasis in the original)

Nevertheless, the trial court deemed appellant’s arrest as valid. It emphasized that he had shot at the officers who were trying to serve the void search warrant. This fact was established by the testimonies of several police officers,[20] who were participants in the raid, and confirmed by the laboratory report on the paraffin tests conducted on the firearms and appellant.[21] Additionally, the judge noted that Appellant Ladjaalam, based on his statements in his Counter Affidavit, impliedly contradicted his assertions in open court that there had been no exchange of gunfire during the raid.[22] The trial court concluded that the testimonies of these officers must prevail over appellant’s narration that he was not in his house when the raid was conducted.

Prescinding from this point, the court a quo validated the arrest of appellant, reasoning thus:

“Under the circumstances, the policemen ‘had authority to pursue and arrest Walpan Ladjaalam and confiscate the firearm he used in shooting at the policemen and to enter his house to effect said arrest and confiscation of the firearm.’ Under Rule 113, Section 5 (a), of the Rules of Court, ‘A peace officer or a private person may, without a warrant, arrest a person xxx (w)hen in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.’ 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. At the time the policemen entered the house of accused Walpan Ladjaalam after he had fired shots at the policemen who intended to serve the Search Warrant to him, the accused was engaged in the commission of a crime, and was pursued and arrested after he committed the crime of shooting at the policemen who were about to serve the Search Warrant.”[23]

As a consequence of the legal arrest, the seizure of the following was also deemed valid: the M14 rifle (with a magazine containing seventeen live ammunition)[24] used by appellant against the police elements, two M14 magazines, and three other M16 rifle magazines.[25] The trial court observed that these items were in “plain view” of the pursuing police officers. Moreover, it added that these same items were “evidence [of] the commission of a crime and/or contraband and therefore, subject to seizure”[26] since appellant “had not applied

for a license to possess firearm and had not been given authority to carry firearm outside his residence.”[27]

For being incredible and unsupported by evidence, appellant’s claim that the items that were seized by the police officers had been planted was disbelieved by the trial court. It ruled that if the police officers wanted to plant evidence to incriminate him, they could have done so during the previous raids or those conducted after his arrest. To its mind, it was unbelievable that they would choose to plant evidence, when they were accompanied by the barangay chairman and a radio reporter who might testify against them. It then dismissed these allegations, saying that frame-up, like alibi, was an inherently weak defense.[28]

The trial court also convicted the accused of the crime of maintaining a drug den. It reasoned as follows:

“The testimony of Rino Bartolome Locson, corroborated by SPO1 Ricardo Lacastesantos and SPO1 Amado Mirasol, Jr. clearly established that Walpan Ladjaalam operated and maintained a drug den in his extension house where shabu or methamphetamine hydrochloride, a regulated drug, was sold, and where persons or customers bought and used shabu or methamphetamine hydrochloride by burning the said regulated drug and sniffing its smoke with the use of an aluminum foil tooter. A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence [may be] proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers. The uncorroborated testimony of accused Walpan Ladjaalam a.k.a. ‘Warpan’ that he did not maintain an extension house or a room where drug users who allegedly buy shabu from him inhales or smokes shabu cannot prevail over the testimonies of Locson, SPO1 Lacastesantos, and SPO1 Mirasol. He admitted that he is the owner of the extension house but he alleged that there were four (4) occupants who rented that extension house. He knew the name of only one of the four occupants who are allegedly from Jolo, a certain Momoy, the husband. Aside from being uncorroborated, Walpan’s testimony was not elaborated by evidence as to when or for how long was the extension house rented, the amount of rental paid, or by any other document showing that the extension house was in fact rented. The defense of denial put up by accused Walpan Ladjaalam a.k.a. ‘Warpan’ is a weak defense. Denial is the weakest defense and cannot prevail over the positive and categorical testimonies of the prosecution witnesses. Denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving evidence which deserve no weight in law and cannot be given evidentiary weight over the testimony of credible witnesses who testify on affirmative matters. As between the positive declaration of the prosecution witnesses and the negative statements of the accused, the former deserve more credence.”[29]

In conclusion, the trial court explained appellant’s liability in this manner:

“x x x. The act of the accused in firing an M14 rifle to the policemen who were about to enter his house to serve a search warrant constitutes the crime of direct assault with multiple attempted homicide[,] not multiple attempted murder with direct assault[,] considering that no policeman was hit and injured by the accused and no circumstance was proved to qualify the attempted killing to attempted murder.

“The accused Walpan Ladjaalam a.k.a. ‘Warpan’ cannot be held liable [for] the crime of Violation of Section 16, Article III, in relation to Section 21, Article IV, of Republic Act 6425 otherwise known as the Dangerous Drugs Act of 1992, as amended, because the fifty (50) pieces of folded aluminum foils having a total weight of 1.7426 grams all containing methamphetamine hydrochloride or shabu allegedly found in his house are inadmissible as evidence against him considering that they were seized after [a] search conducted by virtue of Search Warrant No. 20 which is totally null and void as it was issued for more than one offense, and were not found in ‘plain view’ of the police officers who seized them. Neither could the accused be held liable for illegal possession of firearms and ammunition except for the (1) M14 rifle with Serial Number 1555225 and with magazine containing fifteen (15) live ammunition and two more M14 rifle magazines with twenty (20) and twenty-one (21) live ammunition respectively considering that the policemen who recovered or seized the other firearms and ammunition did not testify in court. The blue bag containing assorted coins cannot be returned to the accused Walpan Ladjaalam a.k.a. ‘Warpan’ because according to the accused the blue bag and

assorted coins do not belong to him[;] instead the said assorted coins should be turned over to the National Treasury.”[30]

The Issues

In his Brief, appellant submits the following Assignment of Errors:

I

“The trial court erred when it concluded that appellant Walpan Ladjalam y Mihajil [had] fired first at the police officers who went to his house to serve a search warrant upon him which led to an exchange of fire between Ladjalam and the police officer.

II

“The trial court erred when it denied the appellant the right and opportunity for an ocular inspection of the scene of the fire and where the house of the appellant [was] located.

III

“The trial court erred when it ruled that the presumption of regularity in the performance of their duties [excluded] the claim of the appellant that the firearms and methamphetamine hydrochloride (i.e. shabu) were planted by the police.”[31]

In the interest of simplicity, we shall take up these issues seriatim: (a) denial of the request for ocular inspection, (b) credibility of the prosecution witnesses, and (c) the defense of frame-up. In addition, we shall also discuss the proper crimes and penalties to be imposed on appellant.

The Court’s Ruling

The appeal has no merit.

First Issue: Denial of Request for Ocular Inspection

Appellant insists that the trial court erred in denying his request for an ocular inspection of the Ladjalam residence. He argues that an ocular inspection would have afforded the lower court “a better perspective and an idea with respect to the scene of the crime.”[32] We do not agree.

We fail to see the need for an ocular inspection in this case, especially in the light of the clear testimonies of the prosecution witnesses.[33] We note in particular that the defense had even requested SPO1 Amado Mirasol Jr. to sketch the subject premises to give the lower court a fairly good idea of appellant’s house.[34] Viewing the site of the raid would have only delayed the proceedings.[35] Moreover, the question whether to view the setting of a relevant event has long been recognized to be within the discretion of the trial judge.[36] Here, there is no reason to disturb the exercise of that discretion.[37]

Second Issue: Credibility of Prosecution Witnesses

Appellant, in essence, questions the credibility of the prosecution witnesses.[38] Suffice it to state that the trial court’s assessment of their credibility is generally accorded respect, even finality.[39] After carefully examining the records and finding no material inconsistencies to support appellant’s claim, we cannot exempt this case from the general rule.[40] Quite the contrary, the testimonies of these witnesses positively showed that appellant had fired upon the approaching police elements, and that he had subsequently attempted to escape. SPO1 Amado Mirasol Jr.[41] testified thus:

“PROSECUTOR NUVAL:

Q: And, this trail is towards the front of the house of the accused?

A:

Yes.

Q:

And it's there where you were met by a volley of fire?

A:

Yes, Your Honor.

COURT:

Q:

How far were you from the concrete fence when you were met by a volley of fire? ... You said you were fired upon?

A:

More or less, five (5) meters.

x x x x x x x x

PROSECUTOR NUVAL:

Q:

Now, you said you were able to enter the house after the gate was opened by your colleague Felipe Gaganting ... I will reform that question.

Q:

Who opened the gate Mr. Witness?

A:

SPO2 Felipe Gaganting, Efren Gregorio and Allan Marcos Obut.

Q:

And, at that time you were hiding at the concrete fence?

A:

Yes.

Q:

Now, when this gate was opened, you said you went inside the house, right?

A:

Yes.

Q:

What did you see inside the house?

A:

I, together with SPO1 Ricardo Lacastesantos, entered the main door of the house of Walfran [sic] Ladjalam at the ground floor. We went inside the sala on the ground floor of his house[;] I saw two old woman.

x x x x x x x x

PROSECUTOR NUVAL:

Q:

Now, what did you do with these two old women?

A:

I did not mind those two old women because those two women were sitting on the ground floor. I was concentrating on the second floor because Ladjalam was firing towards our group so, I, together with Ricardo Lacastesantos, went upstairs to the second floor of the house.

Q:

Were you able to go to the second floor of the house?

A:

Yes.

Q:

What happened when you were already on the second floor?

A:

While we were proceeding to the second floor, Walfan [sic] Ladjalam, noticed our presence and immediately went inside the bedroom [o]n the second floor and he went immediately and jumped from the window of his house x x x leading to the roof of the neighbor's house.

x x x x x x x x

COURT:

Reform. That is leading

Q:

What happened when you entered and he jumped to the roofing of the neighbor's house?

A:

Immediately, I myself, we immediately went downstairs and asked the assistance of the members of the raiding team to arrest Walfan Ladjalam.

x x x x x x x x

PROSECUTOR NUVAL:

Q:

Were you able to go down?

A:

Yes.

Q:

What happened when you were there?

A:

We immediately went out and I asked the assistance of the members of the raiding team and the investigator of the unit especially SPO1 Cesar Rabuya. I was able to manage to arrest Walfan Ladjalam.”[42]

What happened thereafter was narrated by Senior Police Officer Ricardo Lacastesantos,[43] as follows:

“Q:

What did you notice [o]n the second floor?

A:

I went where the firing came from, so, I saw [an] M14 rifle and I shouted from the outside, ‘do not fire at the second floor because there [are] a lot of children here.’

Q:

Now, that rifle you said [was an] M14, where did you find this?

A:

At the sala set.

Q:

This sala set where is this located?

A:

Located [on] the second floor of the house.

Q:

Is there a sala [o]n the second floor?

A:

Yes.

Q:

Can you still identify that M14 rifle which you said you recovered from the sala set?

A:

Yes.

Q:

Why can you identify that?

A:

The Serial No. of M14 is 1555225 and I marked it with my initial.

Q:

Now, I have here M14 rifle[;] will you please tell us where is the Serial No. of this?

A:

1555225 and I put my initial, RJL.

FISCAL NUVAL:

This is already marked as our Exhibit 'B-3' with magazine, one magazine and seven round [ammunition].

Q:

After recovering this, what did you do with this firearm?

A:

When I recovered it I removed the bullets inside the chamber[.] I removed the magazine and I turned it over to the investigator.

Q:

Where did you turn it over?

A:

At the crime scene.

Q:

Now, that magazine, can you still identify this?

A:

Yes.

Q:

Why?

A:

I put x x x markings.

x x x x x x x x

COURT:

So, a[si]de from the magazine attached to the M14 rifle you found six more magazines?

A:

Yes, so, all in all six magazines, three empty M16 rifle magazines and three M14.

Q:

The M16 magazines [were] empty?

A:

Empty.

Q:

How about the M14?

A:

Found with [ammunition].

x x x x x x x x

Q:

So, where are the three M16 magazines?

A:

In the corner.

Q:

What did you do with [these] three magazines of M16?

A:

I turned [them] over to the investigator.

Q:

Can you identify them?

A:

Yes, because of my initials[.]

Q:

Where are your initials?

A:

On the magazines.

Q:

RJL?

A:

RJL.”[44]

These were confirmed by the results of the paraffin tests conducted on appellant and on the weapons seized during the raid. Both of his hands as well as the weapons, particularly the M-14 which he had used, were positive for gunpowder nitrate. Police Inspector Mercedes Delfin-Diestro explained in open court:

“Q:

Okay. Now, what was the result of your examination, Madam Witness?

A:

The result of the examination [was] that both hands of the subject person, ha[d] presence of gun powder nitrates.

Q:

What do you mean Madam Witness, what does that indicate?

A:

It indicates there is presence of powder nitrates.

Q:

Can we conclude that he fired a gun?

A:

I cannot conclude that he fired a gun because there are so many circumstances [why] a person [would be] positive on his hands for gun powder nitrates.

Q:

But, most likely, he fired a gun?

A:

Yes.

x x x x x x x x

PROSECUTOR NUVAL:

Q:

What about, Madam Witness this Exhibit 'B-3', which is the M14 rifle. What did you do with this?

A:

SPO3 Abu did the swabbing both in the chamber and the barrel wherein I observed there [were] black and traces of brown residue on the bolt, chamber and in the barrel.

Q:

And, that indicates Madam Witness...?

A:

It indicates that the gun was fired.

Q:

Recently?

A:

Because of the traces of brown residue, it could be possible that the gun was fired before the incident x x x.

COURT:

Q:

There is also black residue?

A:

Yes.

Q:

What does it indicate?

A:

It indicates that the firearm was recently fired.

Q:

And, where is this swab used at the time of the swabbing of this Exhibit?

A:

This one.

PROSECUTOR NUVAL:

May we ask that this be marked as Exhibit 'B-3-A'.

COURT:

Q:

The firing there indicates that the gun was recently fired, during the incident?

A:

Yes.

Q:

And also before the incident it was fired because of the brown residue?

A:

Yes, Your Honor.”[45] (emphasis supplied)

Duly proven from the foregoing were the two elements[46] of the crime of illegal possession of firearms. Undoubtedly, the established fact that appellant had fired an M-14 rifle upon the approaching police officers clearly showed the existence of the firearm or weapon and his possession thereof. Sufficing to satisfy the second element was the prosecution's Certification[47] stating that he had not filed any application for license to possess a firearm, and that he had not been given authority to carry any outside his residence.[48] Further, it should be pointed out that his possession and use of an M-14 rifle were obviously unauthorized because this weapon could not be licensed in favor of, or carried by, a private individual.[49]

Third Issue: Defense of Frame-up

From the convoluted arguments strewn before us by appellant, we gather that the main defense he raises is frame-up. He claims that the items seized from his house were “planted,” and that the entire Zamboanga police force was out to get him at all cost.

This Court has invariably held that the defense of frame-up is inherently weak, since it is easy to fabricate, but terribly difficult to disprove.[50] Absent any showing of an improper motive on the part of the police officers,[51] coupled with the presumption of regularity in the performance of their duty, such defense cannot be given much credence.[52] Indeed, after examining the records of this case, we conclude that appellant has failed to substantiate his claim. On the contrary, his statements in his Counter Affidavit are inconsistent with his testimony during the trial.[53] He testified thus:

“Q

Now, Mr. Witness, do you remember having executed an Affidavit/ a Counter-Affidavit?

A

I could not remember.

Q

I have here a Counter-Affidavit and it was signed before this representation on the 8th day of December 1997[;] tell us whose signature is this appearing above the typewritten name

FISCAL NUVAL:

Q

. . . Walpan Ladjaalam, whose signature is this?

(Showing)

A

Yes, Sir. This is mine.

Q

Now, in paragraph[s] 1,2,3,4,5,6,7 and 8; you stated in this Counter-Affidavit which I quote: ‘that I was resting and sleeping when I heard the gunshots and I noticed that the shots were directed towards our house.. and I inspected and x x x we were attacked by armed persons.. and I was apprehended by the persons who attacked x x x our house’; [the] house you are referring to [in] this paragraph, whose house [are you] referring to, is this [what] you are referring to [as] your house or the house of your neighbors [from] which you said you heard gunshots?

A

Our house.

Q

Now, in paragraph 6 of your Counter-Affidavit you stated and I quote: ‘that [o]n that afternoon of September 24, 1997, I was at home in my house Aplaya, Riohondo, Bo. Campo Muslim, my companions in my house [were] the two old women and my children, is this correct?’

A

They were not there.

Q

Now, in that statement Mr. Witness, you said that you were at home in [your] house at Aplaya, Riohondo, Bo. Campo Muslim[;] which is which now, you were in your house or you were in your neighbors[‘] house at that time when you heard gunshots?

A

I was in the house near my house.

Q

So, your statement particularly paragraph 6 of your Counter-Affidavit that you were at home in [your] house at Aplaya Riohondo Bo. Campo Muslim, is x x x not correct?

A

Yes, Sir. This is not correct.”[54]

Crime and Punishment

The trial court convicted appellant of three crimes: (1) maintenance of a drug den, (2) direct assault with attempted homicide, and (3) illegal possession of firearms. We will discuss each of these.

Maintenance of a Drug Den

We agree with the trial court that appellant was guilty of maintenance of a drug den, an offense for which he was correctly sentenced to reclusion perpetua. His guilt was clearly established by the testimony of Prosecution Witness Rino Bartolome Locson, who himself had used the extension house of appellant as a drug den on several occasions, including the time of the raid. The former’s testimony was corroborated by all the raiding police officers who testified before the court. That appellant did not deny ownership of the house and its extension lent credence to the prosecution’s story.

Direct Assault with Multiple Attempted Homicide

The trial court was also correct in convicting appellant of direct assault[55] with multiple counts of attempted

homicide. It found that “[t]he act of the accused [of] firing an M14 rifle [at] the policemen[,] who were about to enter his house to serve a search warrant x x x” constituted such complex crime.[56]

We note that direct assault with the use of a weapon carries the penalty of prision correccional in its medium and maximum periods, while attempted homicide carries the penalty of prision correccional.[57] Hence, for the present complex crime, the penalty for direct assault, which constitutes the “most serious crime,” should be imposed and applied in its maximum period.[58]

Illegal Possession of Firearms

Aside from finding appellant guilty of direct assault with multiple attempted homicide, the trial court convicted him also of the separate offense of illegal possession of firearms under PD 1866, as amended by RA 8294, and sentenced him to 6 years of prision correccional to 8 years of prision mayor.

The Office of the Solicitor General (OSG) disagrees, on the ground that the trial court should not have applied the new law. It contends that under the facts of the case, the applicable law should have been PD 1866, as worded prior to its amendment by RA 8294.

The trial court’s ruling and the OSG’s submission exemplify the legal community’s difficulty in grappling with the changes brought about by RA 8294. Hence, before us now are opposing views on how to interpret Section 1 of the new law, which provides as follows:

“SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

“Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. -- The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

“The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .30 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 centerfire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

“If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

“If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d’etat, such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted coup d’etat.

“The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

“The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.”

Citing *People v. Jayson*,^[59] the OSG argues that the foregoing provision does not cover the specific facts of this case. Since another crime -- direct assault with multiple unlawful homicide -- was committed, appellant cannot be convicted of simple illegal possession of firearms under the second paragraph of the *aforecited* provision. Furthermore, since there was no killing in this case, illegal possession cannot be deemed as an aggravating circumstance under the third paragraph of the provision. Based on these premises, the OSG concludes that the applicable law is not RA 8294, but PD 1866 which, as worded prior the new law, penalizes simple illegal possession of firearms even if another crime is committed at the same time.^[60]

Applying a different interpretation, the trial court posits that appellant should be convicted of illegal possession of firearms, in addition to direct assault with multiple attempted homicide. It did not explain its ruling, however. Considering that it could not have been ignorant of the proviso^[61] in the second paragraph, it seemed to have construed “no other crime” as referring only to homicide and murder, in both of which illegal possession of firearms is an aggravating circumstance. In other words, if a crime other than murder or homicide is committed, a person may still be convicted of illegal possession of firearms. In this case, the other crime committed was direct assault with multiple attempted homicide; hence, the trial court found appellant guilty of illegal possession of firearms.

We cannot accept either of these interpretations because they ignore the plain language of the statute. A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the “other crime” is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused.^[62] In this case, the plain meaning of RA 8294’s simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused.^[63] Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. Moreover, since the crime committed was direct assault and not homicide or murder, illegal possession of firearms cannot be deemed an aggravating circumstance.

We reject the OSG’s contention that PD 1866, as worded prior to its amendment by RA 8294, should be applied in this case. When the crime was committed on September 24, 1997, the original language of PD 1866 had already been expressly superseded by RA 8294 which took effect on July 6, 1997.^[64] In other words, no longer in existence was the earlier provision of PD 1866, which justified a conviction for illegal possession of firearms separate from any other crime. It was replaced by RA 8294 which, among other amendments to PD 1866, contained the specific proviso that “no other crime was committed.”

Furthermore, the OSG’s reliance on *People v. Jayson*^[65] is misplaced. True, this Court sustained the conviction of appellant for illegal possession of firearms, although he had also committed homicide. We explained, however, that “the criminal case for homicide [was] not before us for consideration.”

Just as unacceptable is the interpretation of the trial court. We find no justification for limiting the proviso in the second paragraph to murder and homicide. The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that “no other crime was committed by the person arrested.” If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it

did in the third paragraph. Verily, where the law does not distinguish, neither should we.

The Court is aware that this ruling effectively exonerates appellant of illegal possession of an M-14 rifle, an offense which normally carries a penalty heavier than that for direct assault. While the penalty for the first is prision mayor, for the second it is only prision correccional. Indeed, the accused may evade conviction for illegal possession of firearms by using such weapons in committing an even lighter offense,[66] like alarm and scandal[67] or slight physical injuries,[68] both of which are punishable by arresto menor.[69] This consequence, however, necessarily arises from the language of RA 8294, whose wisdom is not subject to the Court's review. Any perception that the result reached here appears unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a new meaning detached from the manifest intent and language of the legislature. Our task is constitutionally confined only to applying the law and jurisprudence[70] to the proven facts, and we have done so in this case.

WHEREFORE, the appealed Decision is hereby AFFIRMED with the MODIFICATION that appellant is found guilty only of two offenses: (1) direct assault and multiple attempted homicide with the use of a weapon, for which he is sentenced to 2 years and 4 months to 6 years of prision correccional; and (2) maintaining a drug den, for which he was correctly sentenced by the trial court to reclusion perpetua. Costs against appellant.

Let a copy of this Decision be furnished the Congress of the Philippines for a possible review, at its sound discretion, of RA 8294.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Jesus C. Carbon Jr.

[2] Rollo, pp. 10-15.

[3] The appellant was charged together with his wife Nur-In Ladjaalam and one Ahmad Sailabbi. Charges against the latter were later dropped.

[4] Also spelled "Riohondo."

[5] Rollo, p. 10.

[6] Appellant was charged here together with Nur-In Ladjaalam and Ahmad Sailabbi y Hajaraini. The charge against the latter two was subsequently dismissed.

[7] Rollo, p. 12.

[8] In this Information, charged were appellant together with one PO2 Nurhakim T. Hadjula and Ahmad Sailabbi y Hajaraini. Charges against Sailabbi were later dropped; Hadjula still remains at large.

[9] Rollo, pp. 14-15.

[10] No copy of the fourth Information was attached to the records. In any event, the trial court acquitted him of this charge.

[11] Assisted by counsel de parte, Atty. Jose E. Fernandez.

[12] Notice of Appeal was filed on September 25, 1998. This case was deemed submitted for resolution after the Court's receipt of the Brief for the Appellee on May 19, 2000. The filing of a reply brief was deemed waived, as

none was submitted within the reglementary period.

[13] Signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Rico Sebastian D. Liwanag.

[14] Appellee's Brief, pp. 9-16; rollo, pp. 247-254.

[15] Appellant's Brief, p. 5; rollo, p. 149. This Brief was signed by Atty. Jose E. Fernandez.

[16] Decision, pp. 23-32; rollo, pp. 51-60.

[17] These are: 1) violation of § 16, Article III of RA 6495, otherwise known as the Dangerous Drugs Act of 1972; 2) violation of PD 1866 penalizing illegal possession of firearm and ammunition.

[18] It provides:

"SEC. 3. Requisite for issuing search warrant. -- A search warrant shall not issue but upon probable cause in connection with one specific offense 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 things to be seized."

[19] Decision, pp. 32-33; rollo, pp. 60-61.

[20] These are, inter alia, SPO1 Amado Mirasol Jr., SPO1 Ricardo Lacastesantos, PO3 Enrique Rivera and PO3 Renato Dela Peña.

[21] Decision, pp. 42-43; rollo, pp. 70-71. Both appellant and the firearms seized tested positive for gunpowder nitrates.

[22] The trial court quoted the same thus:

"[O]n the afternoon of September 24, 1998, I was at home in my house at Aplaya, Rio Hondo, Barangay Campo Muslim xxx (and) I was resting and sleeping when I heard the sound of gun reports, which awakened me. Then I noticed that the shots were directed towards our house, hence I suspected that we were under attack by armed persons. I tried to escape and jumped outside, but I was apprehended by the persons who attacked our house, before I learned they were police officers." (Decision p. 35; rollo, p. 63.)

[23] Decision, pp. 37-38; rollo, pp. 63-64.

[24] Seen by SPO1 Lacastesantos lying on top of a sofa on the second story of appellant's house when he pursued appellant.

[25] Seen at a corner on the same floor.

[26] Decision, p. 38; rollo, p. 66.

[27] Ibid.

[28] Ibid. p. 51; rollo, p. 79.

[29] Ibid., pp. 48-50; pp. 76-78.

[30] Ibid., pp. 53-54; pp. 81-82.

[31] Appellant's Brief, p. 1; rollo, p. 145.

[32] Appellant's Brief, p. 19; rollo, 163.

[33] As shown by the pertinent portions quoted below. See *People v. Baniel*, 275 SCRA 472, July 15, 1997.

[34] TSN, March 4, 1998, pp. 37-38.

[35] See *People v. Baniel*, *supra*.

[36] Paras, Rules of Court Annotated, 2nd ed., p. 78, citing *Graham on Evidence*. See also Appellee's Brief, pp. 21-22.

[37] See *People v. Moreno*, 83 Phil. 286, April 7, 1949.

[38] Appellant's first assignment of error is herein taken up as the second issue.

[39] See *People v. Elamparo*, GR No. 121572, March 31, 2000; *People v. Cupino, et al.*, GR No. 125688, March 31, 2000; *People v. Estorco*, GR No. 111941, April 27, 2000; *People v. Sultan*, GR No. 132470, April 27, 2000; *People v. Mendoza*, GR No. 128890, May 31, 2000; *People v. Geral*, GR No. 122283, June 15, 2000; *People v. Rios*, GR No. 132632, June 19, 2000; *People v. Molina*, *infra*.

[40] *People v. Narvasa*, 298 SCRA 637, November 16, 1998.

[41] The witness is a member of the team that went to Ladjaalam's house on September 24, 1997. He was tasked to bring the barangay captain to appellant's house to serve as a witness to the search.

[42] TSN, March 4, 1998, pp. 18-23.

[43] Also a member of the raiding team. Lacastesantos, together with SPO1 Mirasol, went inside the house. When appellant tried to escape, Mirasol pursued him; Lacastesantos proceeded to the second floor.

[44] TSN, March 5, 1998, pp. 23-24, 28-29.

[45] TSN, March 3, 1998, pp. 10-11, 19-20.

[46] In the en banc case of *People v. Molina* (292 SCRA 742, 777, July 22, 1998), we said:

"In crimes involving illegal possession of firearms, the prosecution has the burden of proving the elements thereof: (1) the existence of the subject firearm; and (2) the fact that the accused, who owned or possessed the firearm, did not have the corresponding license or permit to possess or carry the same outside his residence." (footnote omitted)

See also *People v. Castillo*, GR No. 131592-93, February 15, 2000; *People v. Lazaro*, GR No. 112090, October 26, 1999; *People v. Narvasa*, 298 SCRA 637, November 16, 1998.

[47] Signed by Police Senior Inspector Ruperto Rugay Regis Jr.

[48] *People v. Lazaro*, *supra*., citing several cases. See also *People v. Narvasa*, *supra*.; *People v. Molina*, *supra*.; *People v. Villanueva*, 275 SCRA 489, July 15, 1997.

[49] *People v. Molina*, *supra*.

[50] See *People v. Barita et al.*, GR No. 123541, February 8, 2000; *Dizon v. CA*, 311 SCRA 1, July 22, 1999.

[51] In fact, appellant admits that he did not have any misunderstanding with the arresting officers. Neither could he think of any reason why they would file false charges against him. (TSN, May 4, 1998, p. 42)

[52] See *People v. Dizon*, *supra*.

[53] TSN, May 4, 1998, pp. 37-39.

[54] Ibid.

[55] Article 148 of the RPC reads:

“ART. 148. Direct assaults. -- Any person or persons who, without public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. xxx.”

[56] Article 48 of the Revised Penal Code (RPC) reads:

“ART. 48. Penalty for complex crimes. -- When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.” (emphasis ours)

[57] Article 249; cf. 51, RPC.

[58] Section 1 of the Indeterminate Sentence Law provides that “the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.” An authority on criminal law writes that “when the accused is guilty of a complex crime, the penalty immediately lower is the next below the penalty provided for the gravest crime.” (Reyes, *The Revised Penal Code*, Book One, 1981 ed., p. 769.) Since direct assault is punishable with prision correccional in its medium and maximum period, the penalty next lower in degree is arresto mayor (maximum) to prision correccional (minimum). Accordingly, the indeterminate penalty for direct assault with multiple attempted homicide is 2 years and 4 months to 6 years of prision correccional.

[59] 282 SCRA 166, 176-177, November 18, 1997.

[60] *People v. Quijada*, 259 SCRA 191, July 24, 1996; *People v. Tac-an*, 182 SCRA 601, February 26, 1990.

[61] “That no other crime was committed by the person arrested.”

[62] See *People v. Atop*, 286 SCRA 157, February 10, 1998; *People v. Deleverio*, 289 SCA 547, April 24, 1998.

[63] See *Tanada v. Yulo*, 61 Phil. 515, May 31, 1935; *Regalado v. Yulo*, 61 Phil. 173, February 15, 1935.

[64] *People v. Jayson*, *supra*.

[65] *Supra* at p. 177, per Mendoza, J.

[66] Offenses under the Revised Penal Code which carry a penalty lighter than that for illegal possession of a high-powered firearm include (1) indirect assault (Article 149), (2) tumults and other disturbances (Article 153), (3) discharge of firearms (Article 254), (4) light threats (Article 285), and (5) light coercion (Article 287).

[67] Article 155 (1) of the Revised Penal code provides the penalty of arresto menor or fine not exceeding 200 pesos upon “[a]ny person who within any town or public place, shall discharge any firearm, rocket, firecracker or other explosive calculated to cause alarm or danger.”

[68] Article 266 (1) imposes the penalty of arresto menor “when an offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attention during the

same period." For example, when a person hits the head of another with the butt of an unlicensed M-14 rifle, thereby incapacitating the latter for one to nine days, the accused may be charged only with slight physical injuries, not illegal possession of firearms.

[69] Under Article 27 of the Revised Penal Code, the duration of *arresto menor* is one to thirty days.

[70] That penal laws should be liberally interpreted in favor of the accused.

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