

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. MAXIMIANO C. ASUNCION, PRESIDING JUDGE OF BRANCH 104, RTC, QUEZON CITY, PATERNA RUIZ, NOLI G. NARCA, FR. NICK RUIZ, LYDIA R. NARC...

G.R. Nos. 83837-42. April 22, 1992

Ponente: NOCON, J.

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NOCON, J.:

In a Petition for Certiorari filed under Rule 65 of the Rules of Court, the People raise the issue of whether the crime of illegal possession of firearms, ammunition and explosives, punishable under P.D. 1866, is absorbed by the crime of subversion, i.e., membership in a subversive organization, punishable under R.A. 1700, as amended.

The People filed this petition assailing the Resolution dated May 4, 1988 of respondent Judge Maximiano C. Asuncion, granting the motion of private respondents to quash the Information charging them with violation of P.D. 1866, as being void ab initio and the order dated June 8, 1988 denying petitioner's motion for reconsideration of said resolution.

Private respondents Paterna Ruiz, Noli Narca, Fr. Nick Ruiz, Lydia Narca, Rodolfo Corteza, and Tomas Dominado, were charged with Subversion under R.A. 1700 before the Metropolitan Trial Court of Quezon City, Branch 40, based on the following information filed on February 10, 1988:

"That on or about the 1st and 2nd day of February, 1988 in Quezon City, Metro Manila Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another by overt acts with the common objective to overthrow the duly constituted government of the Republic of the Philippines, did, then and there, willfully and unlawfully and feloniously affiliate themselves with, become and remain members of the Communist Party of the Philippines/National Democratic Front and/or its successor or of any subversive association in violation of said law." [1]

On February 12, 1988, six separate informations for violation of P.D. 1866 (Illegal Possession of Firearms) were filed against the same respondents before the Regional Trial Court of Quezon City, Branch 104. Said Information in substantially identical language allege:

"That on or about the (1st and 2nd days) of February the accused without any authority of law, did, then and there, willfully, unlawfully and feloniously have in (his/her) possession and control and custody one (cal .45 pistol, armalite rifle, handgranade, fragmentation granade, M-14 rifle), without first securing any license/permit from the proper authority and that said firearm is being used in support and furtherance of the crime of subversion or rebellion." [2]

The facts [3] as presented by the prosecution reveal that sometime in February 1988, elements of the Intelligence Service of the Armed Forces of the Philippines apprehended the private respondents in separate operations.

Various ammunitions, firearms, and explosives were found in their possession, while subsequent searches in their respective hide-outs resulted in the confiscation of several subversive materials, including documents showing

that they are ranking members of the Communist Party of the Philippines/New People's Army, or are mere members.

Private respondents, in their motion to quash,[4] argued that the filing of two (2) separate informations for each of the accused violates the rule on double jeopardy, and that there being only a single criminal intent, the other offense of illegal possession of firearms, ammunition and explosives should be absorbed in the charge of violation of R.A. 1700, following the doctrine in *People v. Hernandez*.^[5]

The respondent Judge, in his questioned resolution, agreed with this contention and held:

"After evaluating the grounds and the arguments in support of the same, the Court is of the opinion that the motion to quash, as prayed for should be GRANTED.

"Applying by analogy the doctrine laid down in the case of *People v. Hernandez* (99 Phil 515), the possession of firearms, ammunition and explosives to which all the accused are charged before this Court is a constitutive ingredient of the crime of subversion and, hence, absorbed by the same and cannot be punished separately. Deadly weapons are needed and necessary to generate the kind of force and violence to accomplish the purpose of subversion. As pointed out by Atty. Poncevic Ceballos, counsel for the accused, the elements of force, violence and other illegal means mentioned in the law (R.A. 1700 as amended), may be done with the use of violence, explosive and ammunition or the possession thereof."^[6] (underscoring supplied)

It should be recalled that in *People v. Hernandez*, supra, and even in the more recent cases of *Enrile v. Amin*,^[7] and *Enrile v. Salazar*,^[8] the issue resolved is that the crime of rebellion cannot be complexed with, nor may a separate information be filed, for violation of common crimes, since force and violence are already necessary ingredients of the same.

Private respondents do not dispute the fact that rebellion is distinct from subversion. However, they want to adopt by analogy existing jurisprudence on rebellion to subversion on the theory that both crimes are political offenses intended to destabilize and overthrow the government with the use of force, violence or other illegal means.^[9] The trial court went along with respondents when it stated:

" . . . The possession of said items by all the accused, as alleged in the information, is the very element of force, violence, or other illegal means in the crime of subversion. So that the crime of alleged possession of firearms in furtherance of rebellion or subversion cannot be separated from the charge of subversion, the former crime being merely an element of the latter crime."^[10]

We cannot agree.

If We are to espouse the theory of the respondents that force and violence are the very essence of subversion, then it loses its distinction from rebellion. In *People v. Liwanag*,^[11] the Court categorically distinguished subversion from rebellion, and held:

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

Furthermore, in the case of *Buscayno v. Military Commissions*,^[12] this Court said that subversion, like treason, is a crime against national security, while rebellion is a crime against public order. Rising publicly and taking

arms against the Government is the very element of the crime of rebellion.[13] On the other hand, R.A. 1700 was enacted to outlaw the Communist Party of the Philippines (CPP), other similar associations and its successors because their existence and activities constitute a clear, present and grave danger to national security.[14]

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

Private respondents contended[15] that the Court in *Misolas v. Panga*[16] impliedly ruled that if an accused is simultaneously charged with violation of P.D. 1866 and subversion, the doctrine of absorption of common crimes as applied in rebellion would have found application therein. The respondents relied on the opinion of this Court when it said:

"x x x in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under PD 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in *Hernandez*, *Geronimo* and *Rodriguez* find no application in this case."[17]

This is however a mere obiter. In the above case, the Court upheld the validity of the charge under the third paragraph of Section 1 of P.D. 1866. The Court opined that the dictum in the *Hernandez* case is not applicable in that case, considering that the legislature deemed it fit to provide for two distinct offenses: (1) illegal possession of firearms qualified by subversion (P.D. 1866) and (2) subversion qualified by the taking up of arms against the Government (R.A. 1700). "The practical result of this may be harsh or it may pose grave difficulty on an accused in instances similar to those that obtain in the present case, but the wisdom of the legislature in the lawful exercise of its power to enact laws is something that the Court cannot inquire into. . ."[18]

The Court further said:

"Undeniably, it is easier to prove that a person has unlawfully possessed a firearm and/or ammunition under P.D. 1866 than to establish that he had knowingly, willfully and by overt acts affiliated himself with, became or remained a member of the Communist Party of the Philippines and/or its successor or of any subversive organization under R.A. 1700, as conviction under the latter requires that membership must be knowing or active, with specific intent to further the illegal objectives of the Party' (quoting from *People v. Ferrer*, supra)

"However, that the same act may be penalized under two different statutes with different penalties, even if considered highly advantageous to the prosecution and onerous to the accused, will not necessarily call for the invalidation of the third paragraph of Section 1 of P.D. 1866 which provides for the higher penalty."[19]

On the issue of whether the filing of the subsequent information constitutes double jeopardy, the trial court in its resolution articulated, thus:

"On the question of double jeopardy, the Court agrees with the observation of the herein accused that the filing of two separate informations against each of the accused constitute a violation of their constitutional right of not being twice put in jeopardy of punishment for the same offense where it can be shown that the offenses in question arise from a single criminal intent. (*People v. Elkanish*, 90 Phil 53)"

The case of *People v. Elkanish*,[20] relied upon by the Honorable Judge, is not in point with the present case. Since We have resolved that P.D. 1866 can be prosecuted independently of R.A. 1700, there can be no double jeopardy. Double jeopardy can be invoked only if one offense is inseparable from another and proceeds from the

same act, in which case, they cannot be subject of separate prosecutions. Art. III, Section 21 of the present Constitution provides:

"Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Implementing the constitutional provision, Rule 117, Section 7 of the Rules of Court provides as follows:

"When the accused has been convicted or acquitted, or the case against him has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

Thus, according to a long line of cases, in order that a defendant may successfully allege former jeopardy, it is necessary that he had previously been (1) convicted or (2) acquitted, or (3) in jeopardy of being convicted of the offense charged, that is, that the former case against him for the same offense has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant has pleaded to the charge.

Premises considered, We find this petition meritorious and the resolution of the trial court dated May 4, 1988 quashing the informations for violation of PD 1866 is hereby reversed and the informations reinstated. Let this case be remanded to the lower court for further proceedings and trial. Cost de officio.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Davide, Jr. and Romero, JJ., concur.

Gutierrez, Jr., J., as in Baylosis vs. Chavez, I join J. Cruz in his dissent.

Cruz, J., I dissent, for the reasons stated in my dissent in Baylosos v. Chavez, G.R. No. 95136, Oct. 3, 1991.

Regalado, J., in the result.

Bellosillo, J., took no part in the deliberations.

[1] Rollo, p. 67.

[2] Rollo, pp. 54-65.

[3] Rollo, pp. 34-35, Appellant's Petition, pp. 4-5.

[4] Rollo, p. 90, 88.

[5] L-6025-26, 99 Phil. 515 (1956).

[6] Rollo, p. 122, Trial Court's Resolution dated May 4, 1988, p. 2.

[7] G.R. 93335, 189 SCRA 573 (1990).

[8] G.R. 92163, 186 SCRA 217 (1990).

[9] Rollo, p. 168, Comment, p. 4.

[10] Rollo, p. 122, Trial Court's Resolution dated May 4, 1988, p. 2.

[11] G.R. 27683, 1976, 73 SCRA 473, 480 (1976).

[12] G.R. 58284, 109 SCRA 273, 289 (1981).

[13] Art. 134, Revised Penal Code.

[14] Buscayno, *supra*.

[15] Rollo, p. 241.

[16] G.R. 83341, 181 SCRA 648 (1990).

[17] *Ibid*, p. 656.

[18] *Ibid*, p. 657.

[19] *Ibid*, p. 655.

[20] L-2666, 90 Phil. 53 (1951).

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