

## FIRST DIVISION

[ G.R. No. 192727, January 09, 2013 ]

**RAUL B. ESCALANTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE COURT OF APPEALS, FORMER SPECIAL TWENTIETH DIVISION AND EIGHTEENTH DIVISION, COURT OF APPEALS, CEBU CITY, RESPONDENTS.**

### R E S O L U T I O N

**REYES, J.:**

#### **Nature of the Petition**

Before this Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside the Decision<sup>[1]</sup> dated June 24, 2008 and Resolution<sup>[2]</sup> dated March 4, 2009 issued by the Court of Appeals (CA) in CA-G.R. CR No. 27673 which, *inter alia*, affirmed the conviction of Raul B. Escalante (petitioner) for violation of Section 261 (q) of Batas Pambansa Blg. 881 (BP 881), otherwise known as the "Omnibus Election Code of the Philippines".

#### **The Antecedent Facts**

The instant case stemmed from two (2) separate Informations that were filed with the Regional Trial Court (RTC) of Calbayog City, Samar against the petitioner, charging him for violation of Section 261 (q) of BP 881 (Election Gun Ban) and Section 1 of Presidential Decree (P.D.) No. 1866,<sup>[3]</sup> as amended (Illegal Possession of Firearms and Ammunitions). The first Information<sup>[4]</sup> dated August 23, 1995, docketed as Criminal Case No. 2074, reads:

The undersigned Prosecutor II of Samar accuses MAYOR RAUL ESCALANTE for VIOLATION OF SECTION 261, PARAGRAPH (Q) OF THE OMNIBUS ELECTION CODE, AS AMENDED BY SECTION 32, REPUBLIC ACT 7166, committed as follows:

That on or about the 3<sup>rd</sup> day of April, 1995, at about 11:00 o'clock in the evening, at *Barangay* Biasong, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, during the Election Period of the May 8, 1995 Election, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) .45 caliber pistol, without first having obtained the proper license and/or permit from the Comelec.

CONTRARY TO LAW.<sup>[5]</sup>

The second Information<sup>[6]</sup> dated June 16, 2000, docketed as Criminal Case No. 3824, reads:

The undersigned Assistant Provincial Prosecutor I of Samar accuses Raul Escalante for Illegal Possession of Firearm (P.D. 1866), as amended by Republic Act No. 8294, committed as follows:

That on or about the 3<sup>rd</sup> day of April, 1995, at nighttime, at *Barangay Biasong*, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, with deliberate intent to possess and without being authorized by law, did then and there wilfully, unlawfully, feloniously and illegally have in his possession, custody and control one (1) caliber .45 pistol loaded with live ammunition, in a public place outside of his residence, without first securing the necessary permit to possess the same from the competent authority, as required by law.

CONTRARY TO LAW.<sup>[7]</sup>

The two cases were consolidated and jointly tried by the RTC as the crimes charged against the petitioner arose from the same incident. Upon arraignment, the petitioner pleaded not guilty to both charges.<sup>[8]</sup>

During the pre-trial conference, the petitioner admitted the following facts: *first*, that he was not issued any license to possess any firearm; and *second*, that April 3, 1995 fell within the election gun ban period imposed by the Commission on Elections (COMELEC).<sup>[9]</sup>

Trial on the merits ensued thereafter.

### ***The Prosecution's Version***

The petitioner, then the Municipal Mayor of Almagro, Samar, was the guest of honor during the fiesta celebration in *Barangay Biasong* that was held on April 3, 1995. Towards the end of the program, the emcee called on the petitioner and Ina Rebuya to crown the fiesta queen. Thereupon, the petitioner went to fetch Ina Rebuya who was seated together with Atty. Felipe Maglana, Jr. (Atty. Maglana) and the other members of the rival political party. It was then that Atty. Maglana noticed that the petitioner had a firearm tucked on his waist.<sup>[10]</sup>

After the crowning ceremony, the petitioner delivered a speech, stating that he had never won at *Barangay Biasong* in any election. This caught the ire of a group of supporters of the rival political party who then shouted invectives at the petitioner.<sup>[11]</sup>

Shamed by the insults hurled at him, the petitioner cut short his speech and, thereafter, went back to his table. However, the mocking continued. Thereupon, the petitioner, with the loaded firearm in hand, went to the table occupied by his

political rivals. He then stared at Atty. Maglana and thereafter fired a shot upwards, causing the crowd to scamper for safety. The petitioner's bodyguards immediately took hold of his hand to prevent him from firing another shot. Consequently, Ali Prudenciado, a former policeman and then, a *kagawad*, disarmed the petitioner.<sup>[12]</sup>

The following morning, the Chief of Police of Almagro, Samar entered the incident into the police blotter as an "accidental firing".<sup>[13]</sup>

### ***The Defense's Version***

The petitioner denied that he was in possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay Biasong*. He claimed that, while he was delivering his speech therein, a group of people were shouting insults at him. Not wanting to aggravate the situation, the petitioner abruptly ended his speech and went to the group to ask them not to disturb the festivities.<sup>[14]</sup>

The group, however, continued to mock the petitioner, prompting PO3 Conrado Unajan (PO3 Unajan) to draw his firearm from his holster to pacify the unruly crowd. When the petitioner saw this, he tried to take the firearm away from PO3 Unajan and, in the process, a shot was accidentally fired.

Thereafter, the petitioner was able to take hold of the firearm and, together with PO3 Unajan, went back to his table. He then returned the firearm to PO3 Unajan.<sup>[15]</sup>

### **The RTC's Decision**

On May 23, 2003, the RTC rendered a judgment<sup>[16]</sup> finding the petitioner guilty beyond reasonable doubt of the crimes of violation of election gun ban and illegal possession of firearms and ammunitions. The dispositive portion of the RTC's decision reads:

WHEREFORE AND IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused, Raul Escalante, GUILTY beyond reasonable doubt of the crimes of Illegal Possession of Firearm and Ammunition and for Violation of Section 261, Par. (q) of the Omnibus Election Code for which he is hereby sentenced (1) in Criminal Case No. 3824 to an Indeterminate Penalty of imprisonment ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of *prision correccional*, and to pay a fine of [P]15,000.00 and to pay the costs, and (2) in Criminal Case No. 2074, he is hereby sentenced to a straight penalty of ONE (1) YEAR imprisonment and to pay the costs.

IT IS SO ORDERED.<sup>[17]</sup>

The RTC found the testimonies of the prosecution witnesses as to the petitioner's possession of a firearm during the said incident to be categorical and straightforward and should thus be accorded full weight and credit. The RTC likewise disregarded the petitioner's claim that it was PO3 Unajan who was in possession of

the firearm, asserting that the same is belied by the respective affidavits executed by the officials of *Barangay Biasong* and the report executed by the Chief of Police of Almagro.

The petitioner appealed to the CA, asserting that the RTC erred in convicting him for the crimes charged since the prosecution failed to establish the following: (1) the existence of the firearm which is the *corpus delicti*; and (2) the absence of a license or permit for the firearm.

### **The CA's Decision**

On June 24, 2008, the CA rendered the herein assailed decision<sup>[18]</sup> which affirmed *in toto* the May 23, 2003 Judgment of the RTC. The CA held that the prosecution was able to establish the existence of the firearm notwithstanding that it was not presented as evidence. It pointed out that the straightforward and positive testimonies of the prosecution witnesses on the petitioner's possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay Biasong* and the circumstances surrounding it had amply established the *corpus delicti*. In any case, the CA asserted that in an indictment for illegal possession of firearms and ammunitions and violation of election gun ban, the production of the firearm itself is not required for conviction.

Further, the CA held that there was no necessity on the part of the prosecution to prove that the petitioner had no license or permit to possess a firearm since the same had already been admitted by the petitioner during the trial.

The petitioner sought a reconsideration of the June 24, 2008 Decision of the CA, maintaining that the prosecution failed to substantiate the elements of the crimes charged against him. Additionally, the petitioner averred that Criminal Case No. 3824 for illegal possession of firearms and ammunitions should be dismissed pursuant to the ruling of this Court in *Agote v. Judge Lorenzo*<sup>[19]</sup> which declared that an accused is not liable for illegal possession of firearm if the firearm was used in the commission of an offense such as a violation of the election gun ban.

On March 4, 2009, the CA issued a resolution<sup>[20]</sup> which partly granted the petitioner's motion for reconsideration, the decretal portion of which reads:

**WHEREFORE**, the Motion for Reconsideration dated July 18, 2008 is **PARTLY GRANTED**. Criminal Case No. 3824 is DISMISSED and accused-appellant's conviction in Criminal Case No. 2074 for Violation of Section 261, par. (q) of the Omnibus Election Code, **AFFIRMED**.

**SO ORDERED.**<sup>[21]</sup>

The CA ruled that under prevailing jurisprudence there can be no separate offense of simple illegal possession of firearm if the unlicensed firearm is used in the commission of any crime. Considering that the petitioner was convicted of violation of election gun ban, the CA held that he can no longer be convicted for illegal possession of firearm. Nevertheless, the CA found no reason to reverse the conviction of the petitioner for violation of election gun ban.