

THIRD DIVISION

[G.R. No. 164815, February 22, 2008]

SR. INSP. JERRY C. VALEROSO, Petitioner, vs. THE PEOPLE OF THE PHILIPPINES, Respondent.

DECISION

REYES, R.T., J.:

THE law looks forward, never backward. *Lex prospicit, non respicit*. A new law has a prospective, not retroactive, effect.^[1] However, penal laws that favor a guilty person, who is not a habitual criminal, shall be given retroactive effect.^{1-a} These are the rule, the exception and exception to the exception on effectivity of laws.

Ang batas ay tumitingin sa hinaharap, hindi sa nakaraan. Gayunpaman, ang parusa ng bagong batas ay iiral kung ito ay pabor sa taong nagkasala na hindi pusakal na kriminal.

We apply the exception rather than the rule in this petition for review on *certiorari* of the decision of the Court of Appeals (CA), affirming with modification that of the Regional Trial Court (RTC) in Quezon City, finding petitioner liable for illegal possession of a firearm.

The Facts

On July 10, 1996, at around 9:30 a.m., SPO2 Antonio M. Disuanco of the Criminal Investigation Division, Central Police District Command, received a dispatch order^[2] from the desk officer.^[3] The order directed him and three (3) other policemen to serve a warrant of arrest^[4] issued by Judge Ignacio Salvador against petitioner Sr. Insp. Jerry C. Valeroso in a case for kidnapping with ransom.^[5]

After a briefing, the team conducted the necessary surveillance on petitioner, checking his hideouts in Cavite, Caloocan, and Bulacan.^[6] Eventually, the team proceeded to the Integrated National Police (INP) Central Station at Culiati, Quezon City, where they saw petitioner as he was about to board a tricycle.^[7] SPO2 Disuanco and his team approached petitioner.^[8] They put him under arrest, informed him of his constitutional rights, and bodily searched him.^[9] Found tucked in his waist^[10] was a Charter Arms, bearing Serial Number 52315^[11] with five (5) live ammunition.^[12]

Petitioner was then brought to the police station for questioning.^[13]

A verification of the subject firearm at the Firearms and Explosives Division at Camp Crame revealed that it was not issued to petitioner but to a certain Raul Palencia

Salvatierra of Sampaloc, Manila.^[14] Epifanio Deriquito, the records verifier, presented a certification^[15] to that effect signed by Edwin C. Roque, chief records officer of the Firearms and Explosive Division.^[16]

Petitioner was then charged with illegal possession of firearm and ammunition under Presidential Decree (P.D.) No. 1866,^[17] as amended. The Information read:

That on or about the 10th day of July, 1996, in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his/her possession and under his/her custody and control

One (1) cal. 38 "Charter Arms" revolver bearing Serial No. 52315 with five (5) live ammo.

without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW.

Quezon City, Philippines, July 15, 1996.

(Sgd.)

GLORIA VICTORIA C. YAP
Assistant City Prosecutor^[18]

With the assistance of his counsel *de parte*, Atty. Oscar Pagulayan, petitioner pleaded not guilty when arraigned on October 9, 1996.^[19] Trial on the merits ensued.

SPO2 Disuanco and Deriquito testified for the prosecution in the manner stated above.

Upon the other hand, the defense version was supplied by the combined testimonies of petitioner Sr. Insp. Jerry C. Valeroso, SPO3 Agustin R. Timbol, Jr. and Adrian Yuson.

Petitioner recounted that on July 10, 1996, he was fast asleep in the boarding house of his children located at Sagana Homes, *Barangay* New Era, Quezon City.^[20] He was roused from his slumber when four (4) heavily armed men in civilian clothes bolted the room.^[21] They trained their guns at him^[22] and pulled him out of the room. They then tied his hands and placed him near the faucet.^[23] The raiding team went back inside and searched and ransacked the room.^[24] SPO2 Disuanco stood guard outside with him.^[25] Moments later, an operative came out of the room and exclaimed, "*Hoy, may nakuha akong baril sa loob!*"^[26]

Petitioner was told by SPO2 Disuanco that "we are authorized to shoot you because there's a shoot to kill order against you, so if you are planning do so something, do it right now."^[27] He was also told that there was a standing warrant for his arrest.^[28] However, he was not shown any proof when he asked for it.^[29] Neither was the

raiding group armed with a valid search warrant.^[30]

According to petitioner, the search done in the boarding house was illegal. The gun seized from him was duly licensed and covered by necessary permits. He was, however, unable to present the documentation relative to the firearm because it was confiscated by the police. Petitioner further lamented that when he was incarcerated, he was not allowed to engage the services of a counsel. Neither was he allowed to see or talk to his family.^[31]

Petitioner contended that the police had an axe to grind against him. While still with the Narcotics Command, he turned down a request of Col. Romulo Sales to white-wash a drug-related investigation involving friends of the said police officer. Col. Sales was likewise subject of a complaint filed with the Ombudsman by his wife. Col. Sales was later on appointed as the head of the unit that conducted the search in his boarding house.^[32]

SPO3 Timbol, Jr. of the Narcotics Command testified that he issued to petitioner a Memorandum Receipt dated July 1, 1993^[33] covering the subject firearm and its ammunition. This was upon the verbal instruction of Col. Angelito Moreno. SPO3 Timbol identified his signature^[34] on the said receipt.^[35]

Adrian Yuson, an occupant of the room adjacent to where petitioner was arrested, testified that on July 10, 1996, two (2) policemen suddenly entered his room as he was preparing for school.^[36] They grabbed his shoulder and led him out.^[37] During all those times, a gun was poked at him.^[38] He was asked where petitioner was staying. Fearing for his life, he pointed to petitioner's room.^[39]

Four (4) policemen then entered the room.^[40] He witnessed how they pointed a gun at petitioner, who was clad only in his underwear.^[41] He also witnessed how they forcibly brought petitioner out of his room.^[42] While a policeman remained near the faucet to guard petitioner, three (3) others went back inside the room.^[43] They began searching the whole place. They forcibly opened his locker,^[44] which yielded the subject firearm.^[45]

RTC and CA Dispositions

On May 6, 1998, the trial court found petitioner guilty as charged, disposing as follows:

WHEREFORE, the Court hereby finds the accused guilty beyond reasonable doubt of Violation of Section 1 of Presidential Decree No. 1866 as amended by Republic Act No. 8294 and hereby sentences him to suffer the penalty of *prision correccional* in its maximum period or from 4 years, 2 months and 1 day as minimum to 6 years as maximum and to pay the fine in the amount of Fifteen Thousand Pesos (P15,000.00).

The gun subject of this case is hereby ordered confiscated in favor of the government. Let the same be put in trust in the hands of the Chief of the PNP.

SO ORDERED.^[46]

Petitioner moved to reconsider^[47] but his motion was denied on August 27, 1998.^[48] He appealed to the CA.

On May 4, 2004, the appellate court affirmed with modification the RTC disposition. The *fallo* of the CA decision reads:

Verily, the penalty imposed by the trial court upon the accused-appellant is modified to **4 years and 2 months as minimum up to 6 years as maximum.**

WHEREFORE, with the foregoing **MODIFICATION** as to the penalty, the decision appealed from is hereby **AFFIRMED** in all other respects.

SO ORDERED.^[49]

His motion for reconsideration^[50] having been denied through a Resolution dated August 3, 2004,^[51] petitioner resorted to the present petition under Rule 45.

Issues

Petitioner raises the following issues for Our consideration:

- I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.
- II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW IN SUSTAINING THE LEGALITY OF THE SEARCH AND THE VALIDITY AND ADMISSIBILITY OF THE EVIDENCE OBTAINED THEREFROM DESPITE THE OVERWHELMING PROOF THAT THE SAME IS THE FRUIT OF THE POISONOUS TREE.
- III. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN NOT UPHOLDING THE REGULARITY AND VALIDITY SURROUNDING THE ISSUANCE OF THE MEMORANDUM RECEIPTS (SIC) IN FAVOR OF PETITIONER WHICH PROVES HIS INNOCENCE OF THE CRIME CHARGE (SIC).^[52] (Underscoring supplied)

Our Ruling

In illegal possession of firearm and ammunition, the prosecution has the burden of proving the twin elements of (1) the existence of the subject firearm and ammunition, and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.^[53]

The prosecution was able to discharge its burden.

The existence of the subject firearm and its ammunition was established through the

testimony of SPO2 Disuanco.^[54] Defense witness Yuson also identified the firearm.^[55] Its existence was likewise admitted by no less than petitioner himself.^[56]

As for petitioner's lack of authority to possess the firearm, Deriquito testified that a verification of the Charter Arms Caliber .38 bearing Serial No. 52315 with the Firearms and Explosives Division at Camp Crame revealed that the seized pistol was not issued to petitioner. It was registered in the name of a certain Raul Palencia Salvatierra of Sampaloc, Manila.^[57] As proof, Deriquito presented a certification signed by Roque, the chief records officer of the same office.^[58]

The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms.^[59] The prosecution more than complied when it presented both.

The certification is outside the scope of the hearsay rule.

The general rule is that a witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception.^[60] Otherwise, the testimony is objectionable for being hearsay.^[61]

On this score, the certification from the Firearms and Explosives Division is an exception to the hearsay rule by virtue of Rule 130, Section 44 of the Rules of Court which provides:

Sec. 44. *Entries in official records.* – Entries in official records made in the performance of his official duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are prima facie evidence of the facts therein stated.

It may be true that the contents of said certification are only *prima facie* evidence of the facts stated there. However, the failure of petitioner to present controverting evidence makes the presumption un rebutted. Thus, the presumption stands.

Petitioner, however, raises several points which he says entitles him to no less than an acquittal.

The assessment of credibility of witnesses lies with the trial court.

First, petitioner says that the seizure of the subject firearm was invalid. The search was conducted after his arrest and after he was taken out of the room he was occupying.^[62]

This contention deserves scant consideration.

Petitioner's version of the manner and place of his arrest goes into the factual findings made by the trial court and its calibration of the credibility of witnesses. However, as aptly put by Justice Ynares-Santiago in *People v. Rivera*:^[63]