

## FIRST DIVISION

[ G.R. No. 142295, May 31, 2001 ]

**VICENTE DEL ROSARIO Y NICOLAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

Petitioner Vicente del Rosario y Nicolas appeals *via* certiorari from a decision of the Court of Appeals<sup>[1]</sup> affirming with modification the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, and finding him guilty beyond reasonable doubt of violation of P. D. No. 1866, as amended by Republic Act No. 8294 (illegal possession of firearms), sentencing him to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, and to pay a fine of P30,000.00.

On June 17, 1996, Assistant Provincial Prosecutor Eufracio S. Marquez of Bulacan filed with the Regional Trial Court, Bulacan, Malolos an Information charging petitioner Vicente del Rosario y Nicolas with violation of P. D. No. 1866, as follows:

"That on or about the 15th day of June 1996, in the municipality of Norzagaray, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession under his custody and control, the following, to wit:

"a) One (1) pc. Pistol Cal. 45 SN:70G23792 (w/o license)

"b) One (1) pc. Revolver Cal. 22 SN:48673 (w/o license)

"c) Twenty Seven (27) rds live ammos. For cal. .45

"d) Five (5) pcs. Magazines for cal. .45

"e) Eight (8) rds live ammunitions for cal. 22

"f) Five (5) pcs. Magazines short for cal. 5.56 (M16)

"g) Twenty (20) rds live ammunitions for cal 5.56

"without first having obtained a proper license therefor.

"Contrary to law."<sup>[2]</sup>

On June 25, 1996, the trial court arraigned the petitioner. He pleaded not guilty.<sup>[3]</sup> Trial ensued.

The facts, as found by the Court of Appeals, are as follows:

"Sometime in May 1996, the police received a report that accused-appellant Vicente del Rosario was in possession of certain firearms without the necessary licenses. Acting upon the report, P/Sr. Insp. Jerito Adique of the PNP Criminal Investigation Group at Camp Olivas, Pampanga inquired from the PNP Firearms and Explosive Division whether or not the report was true. On May 10, 1996, P/Sr. Insp. Edwin C. Roque of the PNP Firearms and Explosives Division issued a certification (Exhibit L) stating that per records in his office, the appellant is not a licensed/registered firearm holder of any kind and caliber. Armed with the said certification, P/Sr. Insp. Adique applied for a search warrant to enable his team to search the house of appellant.

"On June 13, 1996, a search warrant (Exhibit A) was issued by Judge Gil Fernandez, Sr. of the Regional Trial Court of Quezon City, Branch 217, authorizing the search of the residence of appellant at Barangay Tigbe, Norzagaray, Bulacan.<sup>[4]</sup> On June 15, 1996, at about 7:00 o'clock in the morning, a team led by P/Sr. Insp. Adique went to Norzagaray to serve the warrant. Before proceeding to the residence of the appellant, the police officers requested Barangay Chairman Rogelio de Silva and Barangay Councilman Aurelio Panteleon to accompany them in the implementation of the warrant. Upon arrival at the house of appellant, the police officers introduced themselves to the wife of appellant. When the appellant came out, P/Sr. Insp. Adique informed him that they had a search warrant and that they were authorized to search his house. After appellant gave his permission, the police officers conducted a search of the house. The search yielded the following items: (a) a caliber .45 pistol with Serial No. 703792 with five magazines of caliber .45 (Exhibits B and H) found at the master's bedroom; (b) five magazines of 5.56 M-16 rifle and two radios (Exhibits C to C-4) found in the room of appellant's daughter; and (c) a caliber .22 revolver with Serial No. 48673 (Exhibit F) containing 8 pieces of live ammunition (Exhibit M) found in the kitchen of the house. When asked about his license to possess the firearms, the appellant failed to produce any. This prompted the police officers to seize the subject firearms.

"SPO2 Marion Montezon, one of the searching officers, prepared three separate inventories of the seized items (Exhibits H, M and N). The inventories were signed by P/Sr. Insp. Adique, the appellant and the barangay officials who witnessed the search. Thereafter SPO2 Montezon prepared a certification of orderly search (Exhibit I) which was signed by the appellant and the barangay officials attesting to the orderly conduct of the search.

"For his defense, appellant contends that he had a license for the caliber .45 pistol recovered in his bedroom and that the other items seized

during the search including the caliber .22 revolver, were merely planted by the police officers. Appellant likewise assails the manner in which the search was carried out, claiming that the police officers just barged into his house without asking permission. Furthermore, he claimed that the barangay officials arrived only after the police already had finished the search.

"After trial and on July 2, 1998, the trial court rendered a judgment of conviction, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused VICENTE DEL ROSARIO y NICOLAS guilty beyond reasonable doubt of violation of P. D. No. 1866 as charged under the Information dated June 17, 1996.

"Conformably with the provisions of said law, as amended by Republic Act No. 8294, and pursuant to the provisions of the Indeterminate Sentence Law, the Court hereby sentences the accused to suffer imprisonment of six (6) months of arresto mayor, as minimum, to six (6) years of prision correctional, as maximum, and to pay a fine of Fifteen Thousand Pesos (P15,000.00)."<sup>[5]</sup>

On July 20, 1998, petitioner appealed to the Court of Appeals, assailing the decision for being contrary to facts and the law.<sup>[6]</sup>

On July 9, 1999, the Court of Appeals promulgated its decision affirming with modification the decision of the trial court as set out in the opening paragraph of this decision.<sup>[7]</sup>

On August 10, 1999, petitioner filed with the Court of Appeals a motion for reconsideration and/or new trial.<sup>[8]</sup> He contended that the certification issued by the Chief, Firearms and Explosives Division, Philippine National Police stating that the person named therein had not been issued a firearm license referred to a certain Vicente "Vic" del Rosario of barangay Bigte, Norzagaray, Bulacan, not to him. He comes from barangay Tigbe, Norzagaray, Bulacan, and that he has a valid firearm license.

On February 22, 2000, the Court of Appeals denied the motion for reconsideration for lack of merit.<sup>[9]</sup>

Hence, this appeal.<sup>[10]</sup>

Petitioner submits that the search conducted at his residence was illegal as the search warrant was issued in violation of the Constitution<sup>[11]</sup> and consequently, the evidence seized was inadmissible. He also submits that he had a license for the .45 caliber firearm and ammunition seized in his bedroom. The other firearm, a .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle, and two 2-way radios found in his daughter's bedroom, were

either planted by the police or illegally seized, as they were not mentioned in the search warrant.

We find the petition impressed with merit.

We define the issues as follows:

**First:** whether petitioner had a license for the .45 caliber Colt pistol and ammunition seized in his bedroom; and

**Second:** whether the .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle and two 2-way radios found in his daughter's bedroom, were planted by the police or were illegally seized.

We shall resolve the issues *in seriatim*.

**First:** The .45 cal. Colt pistol in question was duly licensed.

Normally, we do not review the factual findings of the Court of Appeals and the trial courts.<sup>[12]</sup> However, this case comes within the exceptions.<sup>[13]</sup> The "findings of fact by the Court of Appeals will not be disturbed by the Court unless these findings are not supported by evidence."<sup>[14]</sup> In this case, the findings of the lower courts even directly contradict the evidence. Hence, we review the evidence. The trial court held that the copy of the license presented was blurred, and that in any event, the court could rely on the certification dated May 10, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, Philippine National Police stating that Vicente "Vic" del Rosario of Barangay **Bigte**, Norzagaray, Bulacan is not a licensed/registered firearm holder of any kind and caliber.<sup>[15]</sup> As against this, petitioner submitted that he was not the person referred to in the said certification because he is Vicente del Rosario y Nicolas from Barangay **Tigbe**, Norzagaray, Bulacan. The Court takes judicial notice of the existence of both barangay Tigbe and barangay Bigte, in Norzagaray, Bulacan.<sup>[16]</sup> In fact, the trial court erred grievously in not taking judicial notice of the barangays within its territorial jurisdiction, believing the prosecution's submission that there was only barangay Tigbe, and that barangay Bigte in the certification was a typographical error.<sup>[17]</sup> Petitioner presented to the head of the raiding team, Police Senior Inspector Jerito A. Adique, Chief, Operations Branch, PNP Criminal Investigation Command, a valid firearm license. The court is duty bound to examine the evidence assiduously to determine the guilt or innocence of the accused. It is true that the court may rely on the certification of the Chief, Firearms and Explosives Division, PNP on the absence of a firearm license.<sup>[18]</sup> However, such certification referred to another individual and thus, cannot prevail over a valid firearm license duly issued to petitioner. In this case, petitioner presented the printed computerized copy of License No. RCL 1614021915 issued to him on July 13, 1993, expiring in January 1995, by the Chief, Firearms and Explosives Division, PNP under the signature of Reynaldo V. Velasco, Sr. Supt. (GSC) PNP, Chief, FEO.<sup>[19]</sup> On the dorsal side of the printed computerized license, there is stamped the words "Validity of computerized license is extended until renewed license is printed" dated January 17, 1995, signed by Police Chief Inspector Franklin S. Alfabeto, Chief, Licence Branch, FEO.<sup>[20]</sup> Coupled with this indefinite extension, petitioner paid the license fees for the

extension of the license for the next two-year period.<sup>[21]</sup>

Consequently, we find that petitioner was the holder of a valid firearm license for the .45 caliber Colt pistol seized in the bedroom of his house on June 15, 1996.<sup>[22]</sup> As required, petitioner presented the license to the head of the raiding team, Police Senior Inspector Jerito A. Adique of the Criminal Investigation Division Group, PNP.<sup>[23]</sup> As a senior police officer, Senior Inspector Adique could easily determine the genuineness and authenticity of the computerized printed license presented. He must know the computerized license printed form. The stamp is clearly visible. He could decipher the words and the signature of the authorized signing official of the Firearms and Explosives Division, PNP. He belonged to the same national police organization.

Nevertheless, Senior Insp. Adique rejected the license presented because, according to him, it was expired. However, assuming that the license presented was expired during the period January 1995 to January 1997, still, possession of the firearm in question, a .45 caliber Colt pistol with serial No. 70G23792, during that period was not illegal. The firearm was kept at home, not carried outside residence. On June 15, 1996, at the time of the seizure of the firearm in question, **possession of firearm with an expired license was not considered unlawful**, provided that the license had not been cancelled or revoked. Republic Act No. 8294, providing that possession of a firearm with an expired license was unlawful took effect only on July 7, 1997.<sup>[24]</sup> It could not be given retroactive effect.<sup>[25]</sup>

According to firearm licensing regulations, the renewal of a firearm license was automatically applied for upon payment of the license fees for the renewal period. The expired license was not cancelled or revoked. It served as temporary authority to possess the firearm until the renewed license was issued. Meantime, the applicant may keep the gun at home pending renewal of the firearm license and issuance of a printed computerized license. He was not obliged to surrender the weapon. Printed at the dorsal side of the computerized license is a notice reading:

"IMPORTANT

1. This firearm license is valid for two (2) years. Exhibit this license whenever demanded by proper authority.
2. Surrender your firearm/s to the nearest PNP Unit upon **revocation or termination** of this license. Under any of the following instances, your license shall be revoked for which reason your firearm/s is/are subject to confiscation and its/their forfeiture in favor of the government.
  - a. Failure to notify the Chief of PNP in writing of your change of address, and/or qualification.
  - b. Failure to **renew** this license **by paying annual license, fees, within six (6) months from your birth month. Renewal of your license can be made within your birth month** or month preceding your birth month. Late renewal