

## THIRD DIVISION

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

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WALPAN LADJAALAM Y MIHAJIL ALIAS "WARPAN," APPELLANT.**

### DECISION

**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<sup>[1]</sup> 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,<sup>[2]</sup> all signed by Assistant Regional State Prosecutor Ricardo G. Cabaron and dated September 25, 1997. The first Information<sup>[3]</sup> 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,<sup>[4]</sup> 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."<sup>[5]</sup>

The second Information<sup>[6]</sup> 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.”<sup>[7]</sup>

The third Information,<sup>[8]</sup> 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.”<sup>[9]</sup>

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

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.<sup>[11]</sup> 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.<sup>[12]</sup>

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

In its Brief,<sup>[13]</sup> 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