

## **TWENTY-FIRST DIVISION**

**[ CA G.R. CR. No. 00884, January 30, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RIANDANE L. BLAS, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**BORJA, J.:**

On appeal under Rule 124 of the Rules of Court is the Decision<sup>[1]</sup> dated July 14, 2011 of the Regional Trial Court (RTC), 11th Judicial Region, Branch No. 34, Panabo City, in Criminal Case No. CRC 287 – 2009 for Violation of P.D. No. 1866.

#### *The Facts of the Case*

The criminal action was based on an Information dated August 26, 2009 which accuses Riandane Blas as follows –

That on or about August 25, 2009, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without first obtaining a license as required by law, unlawfully, willfully and knowingly had in his possession, control and custody, one (1) caliber .45 pistol bearing serial number 124772 with holster and one magazine loaded with one (1) live ammunition.

CONTRARY TO LAW.<sup>[2]</sup>

On September 3, 2009, Blas was arraigned; he pleaded “not guilty” to the charge.<sup>[3]</sup>

At the preliminary conference set on September 15, 2009, neither the prosecution nor the defense entered any admission or stipulation of facts.<sup>[4]</sup> No admission or stipulation of facts was likewise made by the parties during the pre-trial on October 22, 2009.<sup>[5]</sup>

Trial ensued. The RTC summarized the facts as follows:

Two witnesses, PO1 Dale O. Villar and PO3 Rosalito Ceniza, were presented by the prosecution. Its other evidences consist of the subject firearm, magazine, live ammunition, holster and extract of Police Blotter.

Culled from these evidences, it would appear that at around 9:40 p.m. of 25 October 2009, the police received a call that someone fired a gun at Cagangohan, Panabo City.

To verify the report, two police patrol cars went to the sawmill area of the said barangay. The first to arrive was PO1 Villar on board Mobile 1 followed shortly by PO3 Ceniza riding Mobile 5.

Immediately, PO1 Villar saw the accused, pointed out by a concerned citizen as the one firing the gun, fle[e] the area on board a motorcycle upon seeing them.

They followed the motorcycle and saw it f[a]ll down due to excessive speed when making a turn. Accused however was able to get up and run away. He was chased by PO1 Villar. The latter initially lost him upon reaching the highway, only to see accused reappear and forthwith surrende[r]. After frisking him and finding nothing, he brought him inside the mobile patrol.

PO1 Villar saw the gun only at the police station as according to him PO3 Ceniza was the one who recovered it from the U-box of the motorcycle 25 meters away from the mobile patrol.

On his part, PO3 Ceniza related that after seeing PO1 Villar chasing the accused, he just waited near the place where the motorcycle fell. When PO1 Villar returned together with the accused, he asked him if he recovered the gun. Since the latter replied in [the] negative, they asked the accused to open the U-box of the motorcycle. When he did, they saw inside the subject .45 caliber handgun with one live bullet, magazine and holster.

The only evidences presented by the defense, during its turn, are the testimonies of the accused and Ms. Carfel G. Magnanao.

Accused testified that he had a drinking spree at Pad's Resto Bar before heading home at around 7:30 p.m. of the aforesaid day. When he arrived, he had a quarrel with his wife because of jealousy prompting him to leave the conjugal abode on board a black Honda XRM motorcycle intending to go to his mother's house at Via Vida Subdivision.

While driving the motorcycle, he noticed somebody following him. Believing that the one following are the siblings of his wife and fearing that they will maul him, he drove his motorcycle faster. Due to the speed coupled with his frequent glancing at his back, his motorcycle fell down at a curve[d] portion of the road.

He got up and ran across the highway traversing 150 meters before he was apprehended by the policeman. He was brought to the police station where he was frisked and [the police officer] recovered from his possession his [Blas's] motorcycle key and cellphone.

He does not know who opened the U-box of his motorcycle as he was immediately brought to the police station. As far as he can recall, what was inside the u-box was one wallet, one cellphone and the tools of his motorcycle.

Ms. Carfel G. Magnanao, on the other hand, said that she saw in the evening of that day a motorcycle f[a]ll down three houses away from her house; that the driver ran away and was apprehended by the police; and that he was brought to the patrol car while the policemen opened the u-box of the motorcycle and thereafter drove it away.<sup>[6]</sup>

On July 14, 2011, the RTC rendered the assailed Decision. The RTC found that the prosecution “clearly established” the two essential elements of illegal possession of firearms and explosives under Presidential Decree No. 1866 --- “the existence of the subject firearm and its possession by the accused”. The court said that the accused admitted during the hearing on July 23, 2010 that he “had no license to possess the subject firearm.” The court also declared that the “fact that the firearm was recovered from the motorcycle” was “unchallenged” by contrary evidence or by evidence that “it was fabricated by the arresting officers who were motivated by ill-will.” From this, the RTC concluded that that “the variance in the testimonies [*of the prosecution’s witnesses*] as to who were present when [*the firearm*] was recovered is of no moment.”<sup>[7]</sup>

The RTC’s Decision disposed as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Riadane L. Blas guilty beyond reasonable doubt of illegal possession of high[-]powered firearm defined and penalized under Section 1, paragraph 2 of Presidential Decree No. 1866 as amended.

Accordingly, accused is sentence[d] to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional maximum as minimum period to seven (7) years of prision mayor minimum as maximum period and fine in the amount of Thirty Thousand Pesos (Php 30,000.00) together with the accessory penalties attached thereto.

The subject one (1) caliber .45 pistol bearing Serial Number 124772 with holster and one magazine loaded with one (1) live ammunition is ordered forfeited in favor of the state and turn[ed] over to the Firearms and Explosive Division of PNP to be disposed by the latter in accordance with applicable rules and regulations.

Accused shall serve his sentence at the Davao Farm and Prison Colony, B.E. Dujali, Davao del Norte.

SO ORDERED.<sup>[8]</sup>

On August 5, 2011, Blas filed a Notice of Appeal<sup>[9]</sup> (from the said Decision) which was “given due course” by the RTC in an Order dated August 9, 2011.<sup>[10]</sup>

### *The Issues*

In this recourse, Blas asserts that:

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[11]</sup>

Blas points out that “(a) the arrest of the appellant and the subsequent seizure of the confiscated items was illegal, (b) the court *a quo* failed to appreciate that the prosecution did not in fact establish the elements of the crime of illegal possession of firearm, (c) the required unbroken chain of custody necessary to prove the integrity and source of the subject firearm suffered from serious gap, (d) Villar and Ceniza offered irreconcilable and inconsistent testimonies, thereby tainting their

credibility, and (e) appellant cannot be prosecuted for illegal possession of firearms, even if he concedes without admitting that he possessed the .45 caliber pistol.”<sup>[12]</sup>

Is Blas guilty beyond reasonable doubt of illegal possession of a high-powered firearm penalized under Section 1, paragraph 2 of P.D. 1866, as amended?

### *The Ruling of the Court*

#### *On the validity of arrest*

Blas did not question early on his warrantless arrest - before his arraignment. Neither did he take steps to quash the Information on such ground.<sup>[13]</sup> In his testimony, Blas admitted that he did not protest his arrest by the police officers and “because they were policemen[,] x x x [he] just [went] with them.”<sup>[14]</sup> Even in his Memorandum before the lower court, Blas did not challenge the validity of his arrest.<sup>[15]</sup> Verily, Blas raised the issue of warrantless arrest for the first time on appeal before this Court. By such omissions, he is deemed to have waived any objections on the legality of his arrest.<sup>[16]</sup>

Nevertheless, “a waiver of an illegal warrantless arrest does not x x x mean a waiver of the inadmissibility of evidence seized” during the illegal warrantless arrest.<sup>[17]</sup> To determine the admissibility of the subject firearm, therefore, the Court will rule on the validity of Blas’s arrest.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure states:

*Sec. 5. Arrest without warrant; when lawful.* A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) *When an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and*

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

“For the warrantless arrest under this Rule to be valid, two requisites must concur: (1) the offender has just committed an offense; and (2) the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it.”<sup>[18]</sup>

“Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, *in the absence of actual belief* of the arresting officers, the suspicion that the person to be arrested is *probably guilty* of committing the offense is based on actual facts, *i.e.*, supported by *circumstances sufficiently strong in themselves* to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.”<sup>[19]</sup>

"Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes."<sup>[20]</sup> PO1 Villar, while "on a roving patrol along Cagangohan," Panabo City, received a radio call that someone fired a gun somewhere in Cagangohan. PO1 Villar went to the area to investigate the report and there, someone pointed to Blas as the one who fired the gun. Upon seeing the police, Blas sped up on board his motorcycle, prompting PO1 Villar and his driver to give chase. Blas drove too fast that the motorcycle toppled down. Blas ran on foot and PO1 Villar ran after him until the latter lost Blas. After a few minutes, Blas reappeared and surrendered to PO1 Villar.<sup>[21]</sup> Blas admitted that he sped up and when he fell from the motorcycle, he ran across the highway. A few moments later, he surrendered to PO1 Villar.<sup>[22]</sup>

Blas's "act of trying to get away, coupled with the incident report which they investigated, is enough to raise a reasonable suspicion on the part of the police authorities as to the existence of probable cause" for arresting him.<sup>[23]</sup> It must also be stressed that Blas did not impute any credible motive why the police officers would falsely charge him. He testified that he and the police officers - PO1 Villar and PO3 Ceniza - had neither personal grudge against each other nor altercation previous to the incident. Blas also testified that he did not file any case against the police officers because he did not want "to cause trouble to [an]other person."<sup>[24]</sup> "Absent any proof of motive to falsely accuse" Blas of the offense, the presumption of regularity in the performance of official duty stands.<sup>[25]</sup>

The circumstances of Blas's arrest, thus, were sufficiently strong enough "to create the probable cause of guilt of the person to be arrested." His warrantless arrest was therefore valid under Sec. 5(b), Rule 113 of the 1985 Rules on Criminal Procedure.<sup>[26]</sup>

#### *On the validity of search and seizure*

Unquestionably, the subject firearm was seized without a warrant.

The rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise, such search and seizure becomes unreasonable"<sup>[27]</sup> within the meaning of Article III, Section 2 of the Constitution, which states:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

"Complementing this provision is the exclusionary rule embodied in Section 3(2) of the same article"<sup>[28]</sup> -

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

"There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible