



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 13, 2021**, which reads as follows:*

**“G.R. No. 252275 (People of the Philippines vs. Marsibal Abduhadi y Indaman.)** – The Court resolves an appeal seeking to reverse and set aside the Decision<sup>1</sup> dated 11 October 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09666. The CA affirmed with modification the Decision<sup>2</sup> dated 14 March 2017 of Branch 80, Regional Trial Court (RTC) of Quezon City, in Criminal Case Nos. Q-13-180574 and Q-13-180576.

**Antecedents**

Marsibal Abduhadi y Indaman (appellant) was indicted for violation of Section 3 of Presidential Decree No. (PD) 1866,<sup>3</sup> as amended by Republic Act No. (RA) 9516,<sup>4</sup> and violation of PD 1866, as amended by RA 8294,<sup>5</sup> in two (2) separate Informations, the accusatory portions of which state —

Criminal Case No. Q-13-180574 for illegal possession of explosives (Section 3 of PD 1866, as amended by RA No. 9516)

That on or about the 25th day of January 2013, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and knowingly have in his possession and under his custody and control 2 (two) Fragmentation Grenades, without first having secured the necessary license/permit issued by the proper authorities.

<sup>1</sup> CA *rollo*, pp. 101-119; penned by Associate Justice Walter S. Ong and concurred by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Zenaida T. Galapate-Laguilles.

<sup>2</sup> Id. at 46-54; penned by RTC Presiding Judge Charito B. Gonzales.

<sup>3</sup> Codified Laws on Illegal/Unlawful Possession, etc. of Firearms, Ammunition or Explosives.

<sup>4</sup> An Act Further Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations thereof, and for Relevant Purposes.”

<sup>5</sup> An Act Amending the Provisions of Presidential Decree No. 1866, As Amended, Entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.”

CONTRARY TO LAW.<sup>6</sup>

Criminal Case No. Q-13-180576 for illegal possession of firearm (PD 1866, as amended by RA 8294)

That on or about the 25th day of January 2013, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and knowingly have in his possession and under his custody and control One 9 mm Sub Machine Gun marked Intratec Miami with Serial No. A058598 with two (2) magazines loaded with [twenty-five] pieces live ammunitions, without first having secured the necessary license/permit issued by the proper authorities.

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

Upon arraignment, appellant entered a plea of “not guilty” to the charges.<sup>8</sup> After pre-trial was terminated, trial on the merits ensued.<sup>9</sup>

### Version of the Prosecution

Prior to the police operation conducted in this case, the Acting District Director of the Quezon City Police District (QCPD) received a verified information from an informant that appellant was seen roaming around the Salaam Compound, *Barangay* Culiati, Tandang Sora, Quezon City brandishing a submachine gun. Appellant was tagged as the gunman who killed PO2 Olsin Salih on 07 March 2012 inside the compound.<sup>10</sup> He was likewise the primary suspect in the slaying of Mayor Erlinda Domingo of Maconacon, Isabela who was killed in a shooting incident on 22 January 2013 along Examiner St., near Quezon Avenue, *Barangay* West Triangle, Quezon City.<sup>11</sup>

On or about 11:30 p.m. on 25 January 2013, operatives of the Criminal Investigation and Detection Unit, District Investigation Division, District Special Operation Unit, and Special Weapons and Tactics conducted a joint operation at the safehouse of appellant inside the compound.<sup>12</sup> Upon arrival in the compound, police operatives positioned themselves strategically while PO3 Juanito Felices (PO3 Felices), PO3 Clarence Escobal (PO3 Escobal), and PO3 Norberto Reblora (PO3 Reblora) approached the target house.

Through the partially opened door, the three police officers saw two persons, *i.e.*, appellant wearing a police jacket, and a certain Jennifer de Guzman (de Guzman), having a pot session. The three police officers then entered the house and ordered appellant and his companion to lie down and

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<sup>6</sup> CA *rollo*, pp. 102-103.

<sup>7</sup> Id. at 103.

<sup>8</sup> Id. at 47 and 103.

<sup>9</sup> Id. at 103.

<sup>10</sup> RTC records, p. 20.

<sup>11</sup> Id. at 39.

<sup>12</sup> CA *rollo*, pp. 48 and 104.

conducted a body search on them. PO3 Felices and PO3 Escobal recovered from appellant one "Sub Machine Gun/Intratec Miami" with Serial Ao58598 and two fragmentation grenades, respectively. Meanwhile, PO3 Reblora confiscated the *shabu* paraphernalia and the wallet of de Guzman.<sup>13</sup>

The grenades were checked by SPO2 Rogelio Bagwan of the Explosive Unit of Quezon City by opening them and taking a small amount of substance from the explosive filter to the crime lab for Qualitative Examination. The result was positive for trinitrotoluene (TNT), a high explosive.<sup>14</sup> SPO3 Arturo Caringan, an employee of the Firearms and Explosives Office (FEO) at Camp Karingal, Quezon City, prepared and confirmed the contents of the Certification issued by the FEO on 17 October 2013 that, as per records, the appellant was not a licensed firearm holder of any kind and caliber.<sup>15</sup>

### Version of the Defense

At around 11:30 p.m. of 25 January 2013, appellant had a drinking session with de Guzman and two friends. At past midnight he was awakened when some 10 people went inside his house with guns and flashlights. He was made to lie down on the floor while they searched his room. They showed him firearms and ammunitions allegedly recovered by them.<sup>16</sup>

### Ruling of the RTC

On 14 March 2017, the RTC rendered its Decision,<sup>17</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, accused **MARSIBAL ABDUHADI y INDAMAN** is guilty beyond reasonable doubt of the crime of Violation of Sec. 3[,] P.D. 1866[,] as amended by R.A. 9516 (Illegal Possession of Explosives)[,] and is [sentenced] to suffer the penalty of imprisonment of [*reclusion perpetua*].

With regard to Criminal Case No. Q-13-180576 (Violation of P. D. 1866)[,] as amended by R.A. 8294)[,] accused is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of [*prision mayor*] as maximum and four (4) years[,] two (2) months and one (1) day of [*prision correccional*] as minimum and a fine of Thirty Thousand (P30,000.00) Pesos.

x x x

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<sup>13</sup> Id. at 104-105.

<sup>14</sup> Id. at 105.

<sup>15</sup> Id. at 47.

<sup>16</sup> Id. at 105.

<sup>17</sup> Id. at 46-54.

SO ORDERED.<sup>18</sup>

The RTC found that the prosecution was able to establish all the elements of the crimes charged.<sup>19</sup>

Aggrieved, appellant appealed to the CA.

### **Ruling of the CA**

In its Decision<sup>20</sup> dated 11 October 2019, the CA affirmed with modification appellant's conviction, to wit:

The appeal is DENIED. The *Decision* dated 14 March 2017 rendered by Branch 80 of the Regional Trial Court, National Capital Judicial Region, Quezon City, finding appellant Marsibal Abduhadi y Indanan guilty in Criminal Case No. Q-13-180574 for violation of Section 3 of P.D. No. 1866, as amended by R.A. No. 9516, and in Criminal Case No. Q-13-180576 for violation of P.D. No. 1866, as amended by R.A. No. 8294, is AFFIRMED with MODIFICATIONS, in that:

1. In Criminal Case No. Q-13-180574, appellant is sentenced to suffer an indeterminate sentence of seventeen (17) years and four (4) months, as minimum, to twenty (20) years, as maximum; and
2. In Criminal Case No. Q-13-180576, appellant is sentenced to suffer an indeterminate sentence of six (6) years, as minimum, to ten (10) years, as maximum, and to pay a fine of Thirty Thousand Pesos (P30,000.00).

IT IS SO ORDERED.<sup>21</sup>

The CA ruled that there was a valid warrantless arrest<sup>22</sup> and that all the elements of the crimes of illegal possession of firearm and explosives were proven.<sup>23</sup>

Hence, the appeal.

For purposes of this appeal, the Office of the Solicitor General and the Public Attorney's Office manifested that they were no longer filing their respective supplemental briefs.

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<sup>18</sup> Id. at 53-54.

<sup>19</sup> Id. at 50-52.

<sup>20</sup> Id. at 101-119.

<sup>21</sup> Id. at 118-119.

<sup>22</sup> Id. at 108-111.

<sup>23</sup> Id. at 112-116.

**Issues**

In his brief, appellant claims that:

I

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

II

THE TRIAL COURT GRAVELY ERRED IN NOT RENDERING INADMISSIBLE THE ALLEGEDLY CONFISCATED GRENADES, FIREARMS, AND AMMUNITIONS FOR BEING FRUITS OF THE POISONOUS TREE.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE THE FACT THAT NONE OF THE ELEMENTS OF THE CRIMES CHARGED [WERE] PROVEN BY THE PROSECUTION.

IV

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE APPELLANT'S DEFENSE OF DENIAL.

Appellant essentially asserts that the warrantless arrest was illegal. Consequently, the grenades, firearm, and ammunitions seized from him are inadmissible as evidence against him.

**Ruling of the Court**

The Court finds merit in the appeal.

It is a settled rule that an appeal in a criminal case throws the whole case wide open for review. It becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.<sup>24</sup> This Court has the power to correct any error, even if unassigned, if such is necessary in arriving at a just decision, especially when the transcendental matters of life and liberty are at stake.<sup>25</sup>

After a careful review and evaluation of the evidence on record, the Court finds that the CA erred in upholding the warrantless arrest and the subsequent search and seizure in this case. Moreover, the CA erred in ruling

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<sup>24</sup> *Aradillos v. Court of Appeals*, 464 Phil. 650 (2004).

<sup>25</sup> *People v. Martinez*, 652 Phil. 347 (2010).

that the elements of the offenses charged were established in this case.

*Appellant's warrantless arrest was illegal*

Article III, Section 2 of the Constitution guarantees the right against unreasonable searches and seizures and warrantless arrests and searches, thus:

Section 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. (Emphasis supplied)

As previously pronounced by this Court, “[t]he State cannot in a cavalier fashion intrude into the persons of its citizens as well as into their houses, papers and effects. The constitutional provision sheathes the private individual with an impenetrable armor against unreasonable searches and seizures. It protects the privacy and sanctity of the person[s] [themselves] against unlawful arrests and other forms of restraint, and prevents [them] from being irreversibly ‘cut off from that domestic security which renders the lives of the most unhappy in some measure agreeable.’”<sup>26</sup>

The law, however, recognizes exceptional circumstances under which an arrest without warrant may be effected. Rule 113, Section 5(a) of the Revised Rules of Criminal Procedure provides for the *in flagrante delicto* rule wherein a peace officer may arrest a person without warrant “when, in [their] presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.” In order for a warrantless arrest of a person caught *in flagrante delicto* to be valid, the following requisites must concur: (1) the person to be arrested must execute an overt act indicating that [they have] just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.<sup>27</sup>

In support of its ruling that the warrantless arrest of the appellant is valid, the CA found that “the prosecution successfully established that appellant was caught *in flagrante delicto*.”<sup>28</sup>

The Court is not convinced.

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<sup>26</sup> *People v. Bolasa*, 378 Phil. 1073 (1999).

<sup>27</sup> *Comerciante v. People*, 764 Phil. 627 (2015).

<sup>28</sup> CA Decision, p. 11.

The arresting officers admitted that they did not have any warrant when they conducted their “follow-up” operation against appellant, thus:

ATTY. BANDAÑO [cross-examining PO3 Juanito Felices]

x x x x

Q You will agree with me that **when you went to the house of the accused you were not armed with any warrant of arrest?**

A **Yes, sir.**

Q **And you were not also armed with any search warrant?**

A **Yes, sir.**<sup>29</sup> (Emphasis supplied)

ATTY. BANDAÑO [cross-examining PO3 Clarence Escobal]

Q Mr. Witness, you would agree with me that **when you proceeded to continue with your follow up operation you were not armed with any warrant of arrest, is that correct?**

A **Yes, sir.**

Q And you would agree with me **that you were not armed with any search warrant?**

A **Yes, sir.**

Q **And the only basis of your information that the accused here is the suspect in the killing of one the mayor of Cunacon was through your confidential informant, is that correct?**

A **Yes, sir.**<sup>30</sup> (Emphasis supplied)

When the arresting officers arrived at the safehouse of appellant, there was nothing amiss outside and around the area as to arouse suspicion of any criminal activity. Despite this, the arresting officers, without any warrant, approached appellant’s house and “peeped” inside through the house’s door that was a “little bit opened” from which they saw appellant and de Guzman “having pot session” and “snipping shabu.”<sup>31</sup> Upon seeing this, the arresting officers entered the house, told the occupants to lie down, searched the bodies of the occupants, and recovered the alleged firearm and explosives from the appellant.

The foregoing factual circumstances do not support a valid warrantless arrest *in flagrante delicto*. In particular, the second requisite for such arrest is not present in this case, *i.e.*, the appellant did not perform any overt act indicating that he has just committed, is actually committing, or is attempting

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<sup>29</sup> TSN, 07 August 2014, p. 11.

<sup>30</sup> TSN, 19 March 2015, p. 10.

<sup>31</sup> TSN, 07 August 2014, p. 5.

to commit a crime *in the presence* of the arresting officer.

Even assuming that appellant was indeed engaging in a pot session or possessing unlicensed firearms and explosives inside his house, such criminal acts were not committed **in the presence** or within the view of the arresting officers. This is unmistakable as the arresting officers admitted that they had to “peep” through the door to actually see what appellant was doing inside his house. Clearly, this does not meet the second requisite for an arrest *in flagrante delicto*. No crime was plainly exposed to the view of the arresting officers to justify the arrest of the appellant without a warrant.<sup>32</sup>

The factual circumstances in this case are not unique. In *People v. Bolasa*<sup>33</sup> (*Bolasa*), the arresting officers, upon a tip from an informer, proceeded to a certain house where a man and a woman were allegedly repacking prohibited drugs. Upon reaching the house, they “peeped (inside) through a small window and xxx saw one man and a woman repacking suspected marijuana.” They entered the house, introduced themselves as police officers, and confiscated drug paraphernalia and tea bags, which, upon examination by an expert, were confirmed to contain marijuana. They arrested the man and the woman, who were charged and convicted with violation of RA 6425 or The Dangerous Drugs Act of 1972. Upon appeal, the Court found the warrantless arrest and the resulting search and seizure illegal, thus:

The manner by which accused-appellants were apprehended does not fall under any of the above-enumerated categories. Perforce, their arrest is illegal. First, the arresting officers had no personal knowledge that at the time of their arrest, accused-appellants had just committed, were committing, or were about to commit a crime. Second, the arresting officers had no personal knowledge that a crime was committed nor did they have any reasonable ground to believe that accused-appellants committed it. Third, accused-appellants were not prisoners who have escaped from a penal establishment.

Neither can it be said that the objects were seized in plain view. First, there was no valid intrusion. As already discussed, accused-appellants were illegally arrested. Second, the evidence, i.e., the tea bags later on found to contain marijuana, was not inadvertently discovered. **The police officers intentionally peeped first through the window before they saw and ascertained the activities of accused-appellants inside the room. xxx**

On the contrary, it indicates that **the apprehending officers should have conducted first a surveillance considering that the identities and address of the suspected culprits were already ascertained. After conducting the surveillance and determining the existence of probable cause for arresting accused-appellants, they should have secured a search warrant prior to effecting a valid arrest and seizure.** The arrest being illegal *ab initio*, the accompanying search was likewise illegal. Every evidence thus obtained during the illegal search cannot be used against accused-appellants; hence, their acquittal must follow in faithful obeisance

<sup>32</sup> *Antiquera v. People*, 723 Phil. 425 (2013).

<sup>33</sup> 378 Phil. 1073 (1999).



to the fundamental law.<sup>34</sup> (Emphasis supplied)

Just as in *Bolasa*, the arresting officers in this case should have first conducted surveillance considering that the identity and address of appellant were already ascertained. After conducting surveillance and determining the existence of probable cause to arrest appellant, they should have secured a search warrant prior to effecting an arrest and search.

It is worth noting that even prior to the report that appellant was seen roaming around in the compound, the latter was already the primary suspect, based on “verified” information, in the killing of Mayor Domingo on 22 January 2013,<sup>35</sup> and the killing of PO2 Salih on 7 March 2012.<sup>36</sup> Curiously, despite such “verified” information, the lapse of adequate time between 22 January 2013 or 07 March 2012 and the conduct of the operation on 25 January 2013, and the fact that the identity and address of appellant have been ascertained, the police proceeded with the follow-up operation *without* securing any warrant.

Consequently, this Court cannot uphold the warrantless arrest of the appellant. The arrest was simply unconstitutional and illegal.

The Court recognizes that appellant failed to question the legality of his arrest prior to his arraignment before the trial court. It is an established rule that “an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. xxx Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.”<sup>37</sup> Further, considering appellant’s active participation in the proceedings before the trial court, jurisprudence dictates that, in effect, “he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case.”<sup>38</sup>

Nonetheless, the failure of the appellant to object to the irregularity of his arrest is not enough to sustain his conviction.<sup>39</sup> **A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.**<sup>40</sup>

*Appellant’s warrantless search was also illegal*

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<sup>34</sup> Emphasis and underscoring supplied.

<sup>35</sup> RTC records, p. 34.

<sup>36</sup> Id. at 23.

<sup>37</sup> *People v. Bringcula*, G.R. No. 226400, 24 January 2018.

<sup>38</sup> See *Miclat, Jr. v. People*, 672 Phil. 191 (2011).

<sup>39</sup> *Antiguera v. People*, supra at note 32.

<sup>40</sup> Supra; *People v. Lapitaje*, 445 Phil. 729 (2003).

Article III, Section 2 of the Constitution mandates that a search and seizure must be carried out through a judicial warrant based on the existence of probable cause. A warrantless search and seizure, as a rule, are unreasonable.<sup>41</sup>

Article III, Section 3 of the Constitution provides for the exclusionary rule as a consequence of violating Article III, Section 2, thus:

2. Any evidence obtained in violation of this or the preceding section shall be **inadmissible for any purpose in any proceeding.**<sup>42</sup> (Emphasis supplied)

The foregoing rule reinforces the constitutional guarantee against warrantless arrest and unreasonable search and seizure. In *People v. Aruta*,<sup>43</sup> the Court, referring to the afore-quoted provision, stated:

**The State cannot simply intrude indiscriminately into the houses, papers, effects, and most importantly, on the person of an individual.** The constitutional provision guarantees an impenetrable shield against unreasonable searches and seizures. As such, **it protects the privacy and sanctity of the person himself** against unlawful arrests and other forms of restraint.<sup>44</sup> (Emphasis supplied.)

The Court, however, clarified that this constitutional guarantee is not a blanket prohibition against *all* searches and seizures as it applies only against *unreasonable* searches and seizures.<sup>45</sup> Hence, the Court recognized the exceptional cases when a warrantless search is reasonable and may be made:

The following cases are specifically provided or allowed by law:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in “plain view,” the elements of which are:
  - (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
  - (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
  - (c) the evidence must be immediately apparent; and
  - (d) “plain view” justified mere seizure of evidence without further search.

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<sup>41</sup> *Comerciante v. People*, supra at note 27.

<sup>42</sup> Emphasis and underscoring supplied.

<sup>43</sup> 351 Phil. 868 (1998).

<sup>44</sup> Id.

<sup>45</sup> Id.

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and Emergency Circumstances.<sup>46</sup>

The factual circumstances in this case do not fall under any of the aforementioned exceptional cases. As discussed above, the warrantless arrest of appellant was illegal. Consequently, the subsequent search that was made upon his person cannot be considered as a "warrantless search incidental to a lawful arrest."

There was likewise no seizure of evidence in "plain view" in this case. In the first place, there was no prior valid intrusion because the entry of the arresting officers into the house of appellant and the latter's warrantless arrest were illegal. Meanwhile, the firearms and the explosives that were supposedly recovered from appellant were not inadvertently discovered by the arresting officers, were not immediately apparent, and were seized upon further search. The arresting officers intentionally peeped in the house of appellant. Moreover, the arresting officers testified that they recovered the said evidence upon body search of and frisking appellant after the latter was arrested.<sup>47</sup>

The exceptions under Nos. 3 and 5 do not apply as the instant case does not involve moving vehicles or customs. There was also no showing that the appellant consented to a warrantless search. Further, the evidence on record does not make out the exceptional cases of the stop-and-frisk principle and the presence of exigent and emergency circumstances.

Clearly, the warrantless search and seizure made upon appellant are illegal and unconstitutional. Thus, the firearm and the explosives that were allegedly recovered from the appellant during the illegal search are deemed tainted for being the proverbial fruit of a poisonous tree, and should be excluded as evidence against the appellant.<sup>48</sup>

Considering that the allegedly recovered firearm and explosives are the very *corpus delicti* of the crimes charged, the appellant should thus be acquitted for insufficiency of evidence and reasonable doubt.

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<sup>46</sup> Id. at 637-638.

<sup>47</sup> TSN, 07 August 2014, p. 6; TSN, 19 March 2015, p. 5.

<sup>48</sup> *People v. Martinez*, 652 Phil. 347 (2010).

*The elements of the offenses charged were not established*

Even assuming *arguendo* that the alleged recovered firearm and explosives are admissible as evidence, the prosecution failed to establish the elements of the offenses charged as to warrant the appellant's conviction.

For the prosecution of the offenses of illegal possession of firearm and illegal possession of an explosive devise under PD 1866, as amended, the following elements must be established: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess.<sup>49</sup>

In this case, the RTC, which was affirmed by the CA, ruled that the elements of the offenses were duly established by the following: (a) the positive testimonies of PO3 Felices and PO3 Escobal that they saw appellant in possession of the subject 9mm sub-machine gun and the two hand grenades;<sup>50</sup> (b) referral letter dated 27 January 2013; (c) Joint Affidavit of Arrest; (d) FEO Certification; and (e) four (4) pictures of hand grenades.<sup>51</sup>

The 9mm sub-machine gun was not presented before the RTC because PO3 Reblora, to whom the gun was allegedly turned over by PO3 Felices, could not be located and be presented as witness. While acknowledging that the existence of the subject firearm is best established by the presentation of the firearm itself, the RTC, citing *People v. Orehuela*,<sup>52</sup> held that "the existence of the firearm can be established by testimony, even without the presentation of the same."<sup>53</sup>

The RTC is gravely mistaken.

In *Orehuela*, aside from the testimony of the prosecution's eyewitness, that the existence of the subject .38 caliber pistol in that case was shown by the testimony and report of an NBI ballisticsian, who examined the slug of a bullet recovered from the crime scene. In other words, the existence of the firearm was established through evidence not solely based on testimony.

In this case, the RTC and the CA's finding of the existence of the alleged unlicensed firearm of appellant was based solely on the testimonies of PO3 Felices and PO3 Escobal. No other corroborative or circumstantial evidence was presented to establish the existence of the subject firearm. Thus, the nonpresentation of the subject firearm in this case is fatal, and the prosecution failed to establish the existence of the subject firearm.

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<sup>49</sup> *Saluday v. People of the Philippines*, 829 Phil. 65 (2018).

<sup>50</sup> RTC records, p. 179.

<sup>51</sup> RTC records, p. 160.

<sup>52</sup> 302 Phil. 77 (1994).

<sup>53</sup> RTC records, p. 178.

Moreover, it is evident in the records of the case that the arresting officers did not follow standard procedure in handling the alleged firearm, which creates serious doubt on the *corpus delicti* of the offense charged,<sup>54</sup> thus:

Q Mr. Witness, **where is again the gun you claimed you have recovered?**

A **During inquest proceedings it was with PO3 Reblora. It was in his custody.**

Q Can you get that gun and bring to court?

A I have no information of the whereabouts of PO3 Reblora, sir.

Q **Is that your standard operating procedure to give to somebody else the items which you claimed to have recovered?**

A **No, sir.**

Q **So the first and the last time that you have seen this gun which you claimed to have recovered was during inquest proceedings?**

A **Yes, sir.**<sup>55</sup> (Emphasis supplied.)

Considering that the prosecution failed to establish the existence of the alleged unlicensed firearm in the possession of the appellant, the elements of the offense for illegal possession of firearms were not duly established.

As to the charge of illegal possession of explosives, the RTC held that “the prosecution was able to present the two grenades with markings J.E.-001 and J.E.-002.”<sup>56</sup> However, a review of the records would reveal that the alleged two (2) grenades were also not presented in court. Instead, what was presented were *photographs* of the grenades with markings. The photographs were identified and authenticated by SPO2 Bagwan as the custodian and the one who took the photographs.<sup>57</sup>

While the photographs may be admissible as evidence, and even if the subject grenades themselves were presented in court, the testimonies of PO3 Felices, PO3 Escobal, and SPO2 Bagwan and the lack of documentary evidence as to the handling of the subject grenades seriously discredit their integrity and evidentiary value.

In *People v. Velsaco*,<sup>58</sup> the Court held that when the prosecution is unable to show an unbroken chain of custody of the allegedly confiscated fragmentation hand grenade, the prosecution fails to establish whether the “fragmentation hand grenade identified and admitted into evidence during the

<sup>54</sup> *People v. Velasco*, G.R. No. 231787, 19 August 2019.

<sup>55</sup> TSN, 07 August 2014, p. 10.

<sup>56</sup> RTC records, p. 177.

<sup>57</sup> TSN, 28 August 2014, p. 7.

<sup>58</sup> G.R. No. 231787, 19 August 2019.

trial was the same object allegedly retrieved from the person of accused.”<sup>59</sup> Such failure seriously discredits the integrity and evidentiary value of the *corpus delicti* of the crime charged, creating reasonable doubt as to the guilt of the accused and warranting his acquittal.<sup>60</sup>

In this case, PO3 Escobal, the officer who allegedly recovered the two (2) grenades, testified that he turned them over to the duty investigator, PO3 Romeo Nino,<sup>61</sup> who then *turned over* the grenades to the Explosive Ordinance Division (EOD).<sup>62</sup> PO3 Escobal could identify the grenades through their markings, but admitted that he was not present when the said markings were made on the grenades.<sup>63</sup> On the other hand, PO3 Felices testified that he was tasked to and did turn over the grenades to SPO2 Bagwan at the Explosive Unit in Quezon City, but he has no document to show such turnover.<sup>64</sup>

Meanwhile, SPO2 Bagwan testified that on 6 May 2013, he “was requested by the two police officers to check the grenades,”<sup>65</sup> but did not identify them. He testified that he checked the grenades, that he brought a small amount of substance from the grenades to the crime lab, and that he personally received the chemistry report showing positive result for TNT. The chemistry report, however, was not admitted as its original was not presented.<sup>66</sup> Moreover, SPO2 Bagwan even claimed that he has no personal knowledge where the grenades were actually recovered or if these were in fact confiscated from appellant.<sup>67</sup>

Moreover, it is notable that no receipt for the allegedly seized items from the appellant was presented, which has been held by the Court as “mandatory on the part of apprehending and seizing police officers.”<sup>68</sup> While police officers are “presumed to have performed their duties in a regular manner, such rule does not apply when the testimony[ies] [are] replete with inconsistencies.”<sup>69</sup>

In view of the foregoing, it is clear that the prosecution was unsuccessful in proving that appellant’s arrest and the ensuing search and seizure were legal. Further, the glaring lapses in the handling of the seized items and the failure of the prosecution to present vital pieces of evidence all cast a reasonable doubt on the guilt of appellant on the crimes charged against him.

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<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> TSN, 19 March 2015, pp. 5-6.

<sup>62</sup> Id. at 7.

<sup>63</sup> Id. at 8.

<sup>64</sup> TSN, 07 August 2014, pp. 7-8.

<sup>65</sup> TSN, 28 August 2014, p. 4.

<sup>66</sup> RTC records, p. 160; TSN, 28 August 2014, p. 6.

<sup>67</sup> TSN, 28 August 2014, p. 8.

<sup>68</sup> *People v. Velasco*, supra at note 54.

<sup>69</sup> Id., citing *People v. Bansil*, G.R. No. 120163, 10 March 1999.

**WHEREFORE**, the instant appeal is **GRANTED**. The Decision dated 11 October 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09666 is **REVERSED** and **SET ASIDE**. The accused-appellant is **ACQUITTED** on reasonable doubt, and his immediate release from detainment is ordered, unless he is confined for any other lawful cause.

Let a copy of this Resolution be sent to the Director General of the Bureau of Corrections for immediate implementation. The Director General is ordered to report to this Court within five days from receipt.

Let entry of judgment be issued immediately.

**SO ORDERED.**" (Rosario, *J.*, no part, due to his prior action in the Court of Appeals; Hernando, *J.*, designated additional Member per Raffle dated 13 October 2021.) (Carandang, *J.*, on official leave.)

By authority of the Court:

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *for 11-01-21*

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 80, Quezon City  
(Crim. Case Nos. Q-13-180574 AND Q-13-180576)

The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
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Mr. Marsibal Abduhadi y Indaman  
The Superintendent  
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