



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ARNULFO a.k.a. ARNOLD JACABAN, G.R. No. 184355
Petitioner,

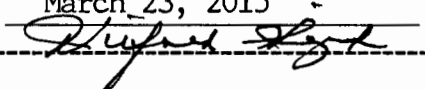
- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

March 23, 2015

X----------X

DECISION

PERALTA, J.:

Assailed in this Petition for Review on *Certiorari* is the Decision¹ dated July 30, 2008 of the Court of Appeals (CA), Cebu City, which affirmed *in toto* the decision of the Regional Trial Court (RTC), Branch 13, Cebu City, finding petitioner guilty of illegal possession of firearms and ammunitions under Presidential Decree (PD) No. 1866, as amended by Republic Act (RA) 8294.

An Information was filed with the RTC, Branch 13, Cebu City² charging petitioner with violation of PD 1866 as amended by RA 8294, to wit:

That on or about the 16th day of July 1999, at about 12:45 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control the following articles, to wit:

¹ Penned by Associate Justice Florito S. Macalino, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; *rollo*, pp. 21-30;

² Docketed as Criminal Case No. CBU -51111.

1. One (1) cal. 45 pistol "Llama Gabilondo" with SN515090
2. One (1) stainless magazine for caliber 45 pistol loaded with seven (7) rounds of Live ammunitions for caliber .45
3. Three (3) short magazines for caliber 5.56 mm containing fifty-nine rounds of live ammos
4. Two (2) long magazines for caliber 5.56 mm containing fifty-five (55) rounds of live ammos
5. One (1) Bandoler for caliber 5.56 mm
6. One (1) bullet [links] for caliber 7.62 mm with twenty-eight (28) rounds of live ammos for caliber 7.62 mm
7. One (1) bullet clips for caliber 30 M1 Garrand Rifle containing eight (8) rounds of live ammos
8. One (1) plastic sachet containing five (5) rounds of live ammos for caliber 5.56 mm
9. Six (6) rounds live ammos for caliber 7.62 mm
10. One (1) pair Upper Handguard for caliber 5.56 mm M16 rifle
11. One (1) damage carrying handle for caliber 5.56 rifle.

without first securing the necessary license/permit issued therefor from any competent authority.

Contrary to law.³

On July 19, 1999, petitioner was arraigned and pleaded not guilty to the charge.⁴

Trial on the merits ensued.

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

Evidence for the prosecution established that on July 15, 1999, Police Senior Inspector Ipil H. Dueñas (P/SInsp. Dueñas) of the now defunct Presidential Anti-Organized Crime Task Force (PAOCTF) filed an Application for Search Warrant before Branch 22 of the RTC, Cebu City, to search the premises of [appellant's] residence at J. Labra St., Guadalupe, Cebu City and seize the following items.

One (1) 7.62 cal M-14 Rifle;
Two (2) 5.56 mm M16 Armalite Rifle;
One (1) 12 gauge Shotgun;
One (1) .45 cal. Pistol;
One (1) .9 mm cal. Pistol

³ *Id.* at 22.

⁴ *Id.*

A Search Warrant was then immediately issued to the applicant by Judge Pampio A. Abarintos.

At about 12:45 in the morning of July 16, 1999, the search warrant was implemented by P/S Insp. Dueñas as the team leader, SPO2 Eric Mendoza, SPO2 Eric Abellana, PO1 Allan Jalagpas, PO3 Epifania Manila Sarte and other members of the PAOCTF. Before reaching appellant's house, the policemen invited three (3) barangay tanods from Guadalupe's Barangay outpost to accompany them to the house of the appellant.

Upon arrival to appellant's house, SPO2 Abellana served the search warrant to appellant who was just inside the house together with his wife and other ladies. Upon informing appellant of the search warrant, he became angry and denied having committed any illegal activity. P/SInsp. Dueñas assured appellant that he had nothing to worry about if the PAOCTF would not find anything.

The team proceeded to search the living room in the presence of three tanods and the appellant himself. The team continued to search the room where SPO2 Abellana found a calibre .45 placed in the ceiling. Appellant, who was at the living room that time, rushed to the room and grappled with SPO2 Abellana but failed to get hold of the gun.

After an exhaustive search was done, other firearms and ammunitions were recovered from the searched premises. An inventory was made at the living room of appellant in the presence of appellant himself, the barangay tanods and other persons present during the search. After appellant and the witnesses signed the inventory receipt, the team proceeded back to their office with appellant and the confiscated items.

Police Officer IV Dionisio V. Sultan, Chief Clerk of the Firearms and Explosives Division of the Philippine National Police-Visayas (FED PNP-Visayas), testified that he prepared a certification dated April 29, 2002. Based on their office's master, appellant is not licensed to possess any kind of firearm or ammunition.

For the defense, they presented witness Felipenerie Jacaban, older sister of the appellant, who testified as to her presence during the conduct of the search. According to Felipenerie, at about 12:45 in the morning of July 16, 1999, policemen conducted a raid in the house of Gabriel Arda (uncle of appellant). The policemen who implemented the warrant were looking for his brother, herein appellant, so she went to appellant's house and informed him that a raid was conducted at their uncle's house and policemen were looking for him. When appellant arrived at his uncle's house, policemen searched around the house and a pistol was subsequently recovered. Felipenerie claims that the recovered pistol was allegedly pledged by a policeman to her father. She also testified that appellant never made any protest and merely observed the proceeding.⁵

On July 12, 2005, the RTC rendered its Decision⁶ convicting petitioner of the crime charged, the dispositive portion of which reads:

⁵ *Id.* at 23-25. (Citations omitted)

⁶ *Id.* at 31-38; Per Judge Meinrado P. Paredes.

WHEREFORE, judgment is hereby rendered finding ACCUSED ARNULFO a.k.a. ARNOLD JACABAN GUILTY of the crime of violation of PD 1866, as amended by RA 8294 and sentences him to a penalty of imprisonment of from SIX (6) YEARS AND ONE (1) DAY of prision mayor, as minimum to SIX (6) YEARS AND EIGHT (8) MONTHS, as maximum, plus fine in the amount of ₱30,000.

With cost against the accused.

SO ORDERED.⁷

In so ruling, the RTC found that the prosecution had established all the elements of the crime charged. Petitioner was in possession of the firearm, ammunitions and other items with intent to possess the same as they were found inside his house; and he had no license or permit to possess the same from any competent authority. The RTC did not give credence to petitioner's claim that he is not the owner of the house but his uncle, Gabriel Arda, as the latter did not testify at all and was not in the house at the time of the raid. It was petitioner and his wife who were at the house at 12:45 a.m. of July 16, 1999; and that petitioner did not protest his arrest.

Petitioner appealed his conviction to the CA. After the respective briefs had been filed, the case was submitted for decision.

On July 30, 2008, the CA issued its assailed Decision which affirmed *in toto* the RTC decision.

The CA agreed with the RTC's conclusion that the elements of the crime charged were duly proved by the prosecution. Anent petitioner's claim of the alleged discrepancy in the testimony of PO3 Sarte on the time the raid was conducted, the CA found the same to be minor and did not damage the essential integrity of the prosecution's evidence in its material whole; and that such discrepancy was explained by PO3 Sarte in her testimony.

Hence, this petition for review filed by petitioner.

Petitioner argues that the RTC decision finding him guilty of the crime charged is premised on its erroneous conclusion that he is the owner the house where the unlicensed firearms and ammunitions were found. He reiterated his claim that there was discrepancy in the testimony of PO3 Sarte as to the time the raid was conducted.

⁷ *Id.* at 38.

As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court.⁸ As such, we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. The findings of facts by a trial court, when affirmed by the Court of Appeals, are binding on the Supreme Court.⁹ This rule, however, is not without exceptions.¹⁰ However, petitioner failed to show that his case falls under any of the exceptions.

Section 1 of PD 1866, as amended by RA 8294, provides:

Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* -

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided, however,*

That no other crime was committed by the person arrested.

The essential elements in the prosecution for the crime of illegal possession of firearms and ammunitions are: (1) the existence of subject firearm; and, (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.¹¹ The unvarying rule is that ownership is not an essential element of illegal possession of firearms and ammunition.¹² What the law requires is merely possession, which includes

⁸ *Salcedo v. People*, 400 Phil. 1302, 1308 (2000).

⁹ *Id.* at 1304.

¹⁰ (1) When the factual findings of the Court of Appeals and the trial court are contradictory;
 (2) When the conclusion is a findings grounded entirely on speculation, surmises, or conjectures;
 (3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
 (4) When there is grave abuse of discretion in the appreciation of facts;
 (5) When the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
 (6) When the judgment of the Court of Appeals is premised on a misapprehension of facts;
 (7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
 (8) When the findings of fact are themselves conflicting;
 (9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record (*Id.* at 1308-1309).

¹¹ *Evangelista v. People*, 634 Phil. 207, 227 (2010); *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 738; *Gonzales v. Court of Appeals*, 343 Phil. 297, 305 (1997).

¹² *Gonzales v. Court of Appeals*, *supra*.

not only actual physical possession, but also constructive possession or the subjection of the thing to one's control and management.¹³

Once the prosecution evidence indubitably points to possession without the requisite authority or license, coupled with *animus possidendi* or intent to possess on the part of the accused, conviction for violation of the said law must follow. *Animus possidendi* is a state of mind, the presence or determination of which is largely dependent on attendant events in each case. It may be inferred from the prior or contemporaneous acts of the accused, as well as the surrounding circumstances.¹⁴

Here, the prosecution had proved the essential elements of the crime charged under PD 1866 as amended by RA 8294. The existence of the seized firearm and the ammunitions was established through the testimony of PO3 Sarte. There was an inventory of the items seized which was made in the presence of the petitioner and the three barangay tanods who all voluntarily signed the inventory receipt. PO3 Sarte identified all the seized items in open court.

It was convincingly proved that petitioner had constructive possession of the gun and the ammunitions, coupled with the intent to possess the same. Petitioner's act of immediately rushing from the living room to the room where SPO2 Abellana found a calibre .45 and grappled with the latter for the possession of the gun proved that the gun was under his control and management. He also had the *animus possidendi* or intent to possess the gun when he tried to wrest it from SPO2 Abellana.

Petitioner's lack of authority to possess the firearm was established by the testimony of Police Officer IV Dionisio V. Sultan, Chief Clerk of the Firearms and Explosive Division of the Philippine National Police-Visayas (FED-PNP- Visayas) that petitioner is not licensed to possess any kind of firearm or ammunition based on the FED-PNP master list.

Anent petitioner's argument that the house where the firearm was found was not owned by him is not persuasive. We quote with approval what the RTC said in debunking such issue which was affirmed by the CA, thus:

If the accused is not really the owner of the house where the firearm, ammunitions and other items were found, he should have

¹³ *Id.*

¹⁴ *People v. Lian*, 325 Phil. 881, 889 (1996).

protested his arrest. But in the instant case Felipenieri (sic) Jacaban said that there was no protest at all.

If the accused is not really the owner of the house raided by the police officers, what was he and his wife doing there at 12:45 in the morning?

The defense asserted that the house of the accused was already demolished when the road fronting it was widened. But the defense failed to present the tax declaration covering the said house before it was demolished.

x x x

x x x

x x x

Gabriel Arda, the alleged owner of the house did not testify. He was allegedly suffering from hypertension. The defense, however, did not file a motion to take his deposition.

Felipenieri likewise testified that at the time of the raid, the owner of the house was not present. Her testimony bolsters the fact that Gabriel Arda is not really the owner of the house where the raid was conducted.¹⁵

Even assuming that petitioner is not the owner of the house where the items were recovered, the ownership of the house is not an essential element of the crime under PD 1866 as amended. While petitioner may not be the owner, he indeed had control of the house as shown by the following circumstances: (1) When the PAOCTF went to the house to serve the search warrant, petitioner was very angry and restless and even denied having committed any illegal act, but he was assured by P/SInsp. Dueñas that he has nothing to answer if they would not find anything, thus, he consented to the search being conducted; (2) while the search was ongoing, petitioner merely observed the conduct of the search and did not make any protest at all; and (3) petitioner did not call for the alleged owner of the house.

As to the alleged discrepancy in PO3 Sarte's testimony as to the time the search was conducted, we agree with the CA when it found:

Appellant likewise questions the discrepancies in the testimony of prosecution witness PO3 Epifania Sarte. Appellant contends that PO3 Sarte could not even testify correctly as to the time the raid was conducted. According to appellant, the established fact on records shows that it was conducted past midnight of July 16, 1999 while witness PO3 Sarte asserted that it was conducted at 12:45 high noon of said date.

It bears stressing that minor discrepancies might be found in her testimony, but this does not damage the essential integrity of the evidence

¹⁵ *Rollo*, p. 27.

in its material whole, nor should it reflect adversely on the witness' credibility as it erases suspicion that the same was perjured. Here, prior testimony of PO3 Sarte as to the time of the raid is considered only a trivial matter which is not even enough to destroy or discredit her credibility. Besides, she was able to explain her mistake when she previously stated that the search was conducted at 12:45 noon of July 16, 1999 instead of 12:45 in the morning as she was hungry when she first testified. The record likewise does not reveal that PO3 Sarte was actuated by ill-motive in so testifying against appellant. Thus, when there is nothing to indicate that a witness was actuated by improper motives, her positive declarations on the witness stand, made under solemn oath, deserve full faith and credence.¹⁶

The RTC sentenced petitioner to an imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to six (6) years and eight (8) months, as maximum, plus fine in the amount of ₱30,000.00. The CA upheld the RTC. Under PD 1866, as amended by RA 8294, the penalty for illegal possession of firearms classified as high powered, like cal. 45, is *prision mayor* minimum and a fine of ₱30,000.00. Applying Article 64 of the Revised Penal Code, the maximum period of the imposable penalty cannot exceed *prision mayor* minimum in its medium period, there being no mitigating or aggravating circumstance, *i.e.*, six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. The minimum period, as provided in the Indeterminate Sentence Law, shall be within the range of *prision correccional* in its maximum period, *i.e.*, four (4) years, two (2) months and one (1) day to six (6) years, the penalty next lower in degree to *prision mayor* minimum.¹⁷ Thus, the minimum penalty imposable must be modified. Albeit, PD 1866, as amended by RA 8294, is a *malum prohibitum* and that the Revised Penal Code is generally not applicable, it has been held that when a special law, which is a *malum prohibitum*, adopts the nomenclature of the penalties in the Revised Penal Code, the latter law shall apply.¹⁸

While in 2013, RA 10951 entitled “An Act Providing for a Comprehensive Law on Firearms and Ammunitions and Providing Penalties for Violation Thereof” took effect, the same finds no application in this case as the law provides for stiffer penalties which is not at all favorable to the accused.

WHEREFORE, in view of all the foregoing, the Decision of the Court of Appeals, dated July 30, 2008, is **AFFIRMED WITH MODIFICATION**. Petitioner is sentenced to suffer the indeterminate

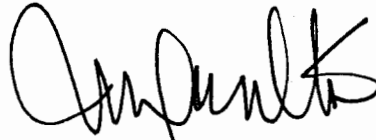
¹⁶ *Id.* at 28.

¹⁷ *Cupcupin v. People*, 440 Phil. 712, 733 (2002).

¹⁸ *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 574.

penalty of imprisonment ranging from SIX (6) YEARS of *prision correccional* in its maximum period, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *prision mayor* minimum in its medium period, as maximum, and to pay a fine of ₱30,000.00.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

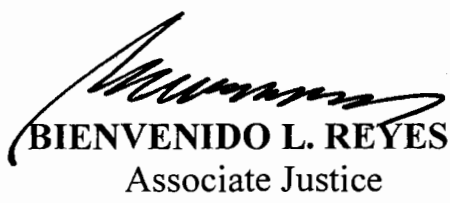
WE CONCUR:



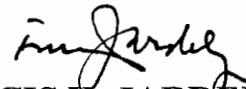
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARTIN S. VILLARAMA, JR.
Associate Justice



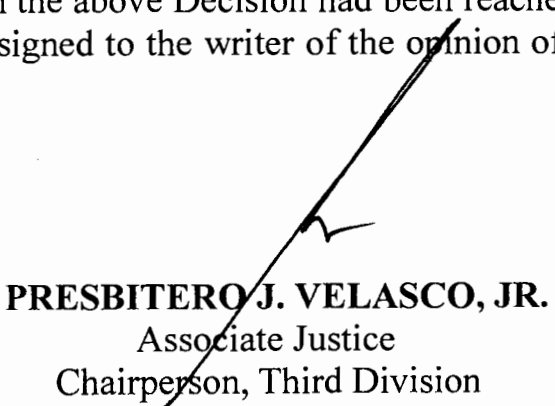
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice