



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **03 February 2020** which reads as follows:*

“G.R. No. 249735 (*Melvin Tagulao y Manuel vs. People of the Philippines*). — Petition for Review on *Certiorari*¹ under Rule 45 of the Revised Rules of Court assailing the December 10, 2018 Decision² and October 3, 2019 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 39654, which affirmed the January 25, 2017 Decision⁴ of the Regional Trial Court (RTC) of Manila, Branch 19 in Criminal (Crim.) Case No. 16-324783 which found Melvin Tagulao y Manuel (petitioner) guilty beyond reasonable doubt of violation of Section 28(a), in relation to Section 28 (e) (1) of Republic Act (R.A.) No. 10591.

The Facts

Petitioner was charged with two (2) separate offenses of violation of Section 28 (a), in relation to Section(e) (1) of R.A. No. 10591, and violation of Section 261 (q) of the Omnibus Election Code in relation to Sections 32 and 33 of R.A. No. 7166, and Commission on Elections Resolution 10015 docketed as Crim. Case Nos. 16-324782 and 16-324783.⁵

Petitioner was exonerated in Crim. Case No. 16-324783 for insufficiency of evidence, leaving Crim. Case No. 16-324782 as the subject of the instant petition. Crim. Case No. 16-324782 was purportedly committed by the petitioner as follows:

That on or about April 19, 2016, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) pen gun marked as “MTM[”] loaded with one (1) live ammunition marked as

¹ *Rollo*, pp. 11-32.

² Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ramon R. Garcia and Gabriel T. Robeniol; id. at 34-42.

³ Id. at 44-48.

⁴ Rendered by Presiding Judge Marlo A. Magdoza-Malagar; id. at 64-67.

⁵ Id. at 52.

“MTM1”, without first having secured the necessary license from the proper authorities.

Contrary to law.⁶

When arraigned on June 1, 2016,⁷ petitioner pleaded "not guilty." Thereafter, trial ensued.⁸

Prosecution's version of events provides that on April 19, 2016, Police Officer 1 Roman Mendoza (PO1 Mendoza) and Police Officer 1 Loubert Aumentado (PO1 Aumentado) were conducting beat patrol along Pier 2, Manila North Harbor when they chanced upon the petitioner holding an improvised gun. Upon seeing the police officers, petitioner scooted prompting the police officers to chase him. Petitioner was eventually apprehended, given a body frisk by the police officer who recovered an improvised gun with yellow rubber band, stainless barrel and handle covered with electrical tape and loaded with one (1) live ammunition. The petitioner was later taken to a hospital for medical examination and then to the police station for booking procedures. Eventually, petitioner was charged for violation of R.A. No. 10591 and Section 261 (q) of Batas Pambansa Blg. (B.P.) 881.⁹

For his part, petitioner denied the charges. Petitioner testified that on April 19, 2016 he was at his house when the wife of Raymond Gulperica (Gulperica), who is his *kumpadre*, called him downstairs. Petitioner found a number of police officers and Punong Barangay Noel Parce (P/B Arce) waiting for him outside his house. Petitioner and Gulperica were then invited to the Delpan Police Community Precinct in connection with a robbery incident that occurred in the area. Petitioner claimed that since the alleged stolen watch was already returned to the owner, the latter decided not to pursue a case against the petitioner anymore. However, the police officers did not let the petitioner go. Instead, he was made to choose between a charge of illegal possession of illegal drugs or illegal possession of firearms. Thereafter, petitioner was brought to Police Station 2 where he saw a pen gun with yellow rubber band and black taped barrel that he allegedly possessed.¹⁰

After trial, or on January 25, 2017, the RTC found the petitioner guilty beyond reasonable doubt of the crime charged,¹¹ viz.:

WHEREFORE, premises considered, in Criminal Case No. 16-324782, the accused, MELVIN TAGULAO y MANUEL, is hereby found

⁶ Id. at 35.
⁷ Id. at 45.
⁸ Id. at 53 and 72.
⁹ Id. at 53-54.
¹⁰ Id. at 54.
¹¹ Id. at 64-67.

GUILTY beyond reasonable doubt for Violation of Section 28 (a) in relation to (e-1) of Republic Act 10591 and is sentenced to suffer the penalty of TEN YEARS AND ONE 1 DAY TO TWELVE YEARS OF PRISION MAYOR IN ITS MAXIMUM PERIOD.

In Criminal Case No. 16-324783, the Court finds herein accused Melvin Manuel Tagulao NOT GUILTY of the crime charged for insufficiency of evidence.

SO ORDERED.¹² (Emphasis in the original)

On appeal, the CA affirmed the RTC's conviction of the petitioner in its December 10, 2018 Decision.¹³ Petitioner moved for reconsideration¹⁴ but was denied in a Resolution dated October 03, 2019.

Hence, the instant petition for review on *certiorari* presenting the following issues:

I.

The Court of Appeals gravely erred in affirming the conviction of the petitioner for violation of Section 28 (a) in relation to (e-1) of R.A. No. 10591, notwithstanding the patent nullity of the information filed against him.

II

The Court of Appeals gravely erred in affirming the conviction of the petitioner for violation of Section 28 (a) in relation to (e-1) of R.A. No. 10591, despite the inconsistent and highly improbable testimony of the prosecution witness.

III

The Court of Appeals gravely erred in affirming the conviction of the petitioner for violation of Section 28 (a) in relation to (e-1) of R.A. No. 10591, notwithstanding the lack of probable cause to arrest him, in violation of his constitutional right against unlawful arrest, searches and seizure.

IV

The Court of Appeals gravely erred in affirming the conviction of the petitioner for violation of Section 28 (a) in relation to (e-1) of R.A. No. 10591, despite the failure of the prosecution to prove the elements thereof beyond reasonable doubt.¹⁵

¹² Id. at 67.
¹³ Id. at 34-32.
¹⁴ Id. at 44.
¹⁵ Id. at 17-18.

The Ruling of the Court

The petition lacks merit.

Objections raised after arraignment are no longer grounds to declare the information as invalid.

Petitioner argued that an information is required by law to be filed by a public prosecutor and cannot be filed by another. To him, an information filed by an officer who lacked the authority to do so or failed to show that they obtained prior written authority from an authorized officer is void. He proceeded to conclude that the decision rendered against him by the trial court is likewise void as the said court did not acquire legal jurisdiction over the case.¹⁶

Petitioner's argument fails to persuade.

As correctly observed by the CA, petitioner raised said issue only on motion for reconsideration. As such, it is too late in the day for the petitioner to repudiate the lower court's jurisdiction on the ground of alleged lack of written authority or approval of the city prosecutor. Petitioner failed to raise the issue of defective information before the RTC and the CA without any justifiable reason. No motion to dismiss or motion to quash was filed by petitioner. Thus, he could no longer question the court's jurisdiction based on defective information due to estoppel by laches.

In *Ongkingco v. Sugiyama*,¹⁷ laches is defined as follows:

Defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, *laches* is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. *Laches* can be imputed against petitioners, because a considerable length of time had elapsed before they raised the said procedural issue, and reasonable diligence should have prompted them to file a motion to dismiss or to quash the Information before the trial court.¹⁸

Moreover, in cases where the information is filed by an authorized officer, without the approval of the city prosecutor appearing in the information, but the resolution for filing of the information bears the approval of the city prosecutor, or his or her duly authorized deputy, and such lack of approval is timely objected to before arraignment, the court may require the public prosecutor to have the signature of the city prosecutor

¹⁶ Id. at 20-21.

¹⁷ G.R. No. 217787, September 18, 2019.

¹⁸ Id.

affixed in the information to avoid undue delay. However, if the objection is raised after arraignment, at any stage of the proceeding or even on appeal, the same should no longer be a ground to declare the information as invalid, because it is no longer a question of jurisdiction over the case.¹⁹

The findings of the trial court and the appellate court as to the credibility of the prosecution witnesses are binding and conclusive upon the Court.

Petitioner also imputes grave error on the part of the CA in affirming his conviction alleging that no expert testimony or certification from any reputable government ballistics office was presented or submitted by the prosecution in evidence that the alleged pen gun is what it purports to be.²⁰ He adds that there was likewise no seizure receipt issued by the arresting officer for the gun if indeed it was taken from the petitioner. Petitioner further alleges that the certification stating that the petitioner has no license to possess a firearm does not bear an attestation from the officer having legal custody of the record that the copy is the correct copy of the original or a specific part thereof. He further claims that prosecution witness PO1 Mendoza did not identify the said certification in open court.

Petitioner further asseverates that a waiver of an illegal, warrantless search does not carry with it a waiver of the inadmissibility of the evidence seized during an illegal warrantless arrest. He also claims that the testimony of PO1 Mendoza is inconsistent, highly improbable and not in accord with ordinary human experience casting a serious doubt on his credibility and narration of facts.²¹

The argument is specious.

It is well to emphasize that the factual findings of the CA, affirming that of the trial court, are generally final and conclusive on the Court.²²

In *Dela Cruz v. People*:²³

It is settled that in petitions for review on *certiorari*, only questions of law are reviewed by this court. The rule that only questions of law may be raised in a petition for review under Rule 45 is based on sound and practical policy considerations stemming from the differing natures of a question of law and a question of fact:

A question of law exists when the doubt or controversy concerns the correct application of law or

¹⁹ Id.

²⁰ *Rollo*, pp. 21-22.

²¹ Id. at 23-24.

²² *Picardal v. People*, G.R. No. 235749, June 19, 2019.

²³ 776 Phil. 653 (2016).

jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

Concomitantly, factual findings of the lower courts as affirmed by the Court of Appeals are binding on this court.²⁴

Also in *People v. Olarte*,²⁵ the Court ruled:

Further, the assessment of the credibility of witnesses is within the province of the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office. To be able to rebut a trial court's assessments and conclusions as to credibility, substantial reasons must be proffered by the accused. Relatedly, when it is decisive of the guilt or innocence of the accused, the issue of credibility is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances.

x x x x

At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; and will not even negate the validity of the conviction of the accused. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. Furthermore, "[i]t is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him." It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he *fails* to raise this issue or to move for the quashal of the information against him on this ground *before* his arraignment. Besides, only those pieces of evidence obtained after an unreasonable search and seizure are inadmissible in evidence for any purpose in any proceeding.

In this case, accused-appellant failed to timely question the illegality of his arrest and to present evidence (or at least some reasonable explanation) to substantiate his alleged wrongful detention. This renders the warrantless arrest and the accompanying search valid; thus, affirming the RTC's jurisdiction over his person and making all the items, confiscated from accused-appellant, admissible in evidence. Hence, the

²⁴ Id. at 672-673.

²⁵ G.R. No. 233209, March 11, 2019.

CA did not err in affirming the RTC's validation of accused-appellant's warrantless arrest and incidental search.²⁶

Needless to state, the petitioner failed to substantiate his claim that he was arrested without valid ground. Over the petitioner's self-serving claims of irregularity and defenses of denial and frame-up, the CA and the RTC properly gave more weight to the positive testimonies of the prosecution's witnesses. This finds basis on the oft-repeated principle that trial courts are in the best position to weigh the evidence presented during trial and to ascertain the credibility of the police officers who testified.²⁷ The petitioner unsuccessfully presented any odious intent on the part of the police officers to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person.

Hence, the Court sustains the lower court's finding of guilt.

Section 28 (a) in relation with (e-1) of R.A. 10591²⁸ provides:

Section 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* – The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

x x x x

(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

(1) Loaded with ammunition or inserted with a loaded magazine;

x x x x

To sustain convictions for illegal possession of firearms, the prosecution must show two (2) essential elements: (1) that the firearm subject of the offense exists; and (2) that the accused who possessed or owned that firearm had no corresponding license for it.²⁹

Here, the quantum of evidence necessary to prove petitioner's guilt beyond reasonable doubt had been sufficiently met by the prosecution. There is no reason to disturb the factual findings of the trial court as sustained by the CA regarding the guilt of the petitioner for the crime charged. However, the Court found the need to modify the penalty imposed by the lower court

²⁶ Id.

²⁷ Id.

²⁸ An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations Thereof. (Approved on May 29, 2018)

²⁹ *De Guzman y Aguilar v. People*, G.R. No. 240475, July 24, 2019.

which is ten (10) years and one (1) day to twelve (12) years of *prision mayor* in its maximum period.

As mandated by Section 28 (a) of R.A. No. 10591, the imposable penalty for unlawful possession of firearms should be *prision mayor* in its medium period or within the range of eight (8) years and one (1) day to ten (10) years. Considering that the unlawfully possessed firearm was loaded with ammunition, the penalty of one (1) degree higher than that provided by Section 28 (a) should be imposed.

The lower courts, however, failed to apply the Indeterminate Sentence Law. In *People v. Padlan*,³⁰ the Court pronounced:

The Indeterminate Sentence Law (ISL) provides that if the offense is punished under a special law, as in this case, the maximum term shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. Nonetheless, the Court had already held in *People v. Simon* that when an offense is defined in a special law but the penalty therefor is taken from the technical nomenclature in the RPC, the legal effects under the system of penalties native to the Code would necessarily apply to the special law.³¹ (Citations omitted)

Thus, applying the Indeterminate Sentence Law and taking into consideration the presence of an aggravating circumstance provided in Section 28 (e) (1) of R.A. No. 10591, the maximum term of the sentence to be imposed should be taken from the maximum period of the imposable penalty, that is *prision mayor medium*, which ranges from nine (9) years, four (4) months and one (1) day to ten (10) years. The minimum term under the Indeterminate Sentence Law shall be within the range of one (1) degree lower than *prision mayor medium*, which is *prision mayor minimum* with a total range of six (6) years and one (1) day to eight (8) years.

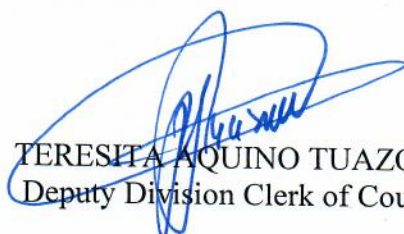
WHEREFORE, premises considered, the petition is hereby **DENIED**. The December 10, 2018 Decision and October 3, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 39654 is **AFFIRMED with MODIFICATION** in that petitioner is sentenced to suffer the indeterminate penalty of eight (8) years of *prision mayor* in its minimum period, as minimum, to ten (10) years of *prision mayor* in its medium period, as maximum, for violation of Section 28 (a), in relation to Section 28 (e) (1) of Republic Act No. 10591.

³⁰ 817 Phil. 1008 (2017).

³¹ Id. at 1027.

SO ORDERED.” (Hernando, J., on official leave).

Very truly yours,


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HON. PRESIDING JUDGE (reg)
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(Crim. Case Nos. 16-324783 & 16-324782)

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*with copy of CA Decision dated 10 December 2018
and CA Resolution dated 3 October 2019.
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