

## THIRD DIVISION

**[ G.R. No. 164815, September 03, 2009 ]**

**SR. INSP. JERRY C. VALEROSO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### R E S O L U T I O N

**NACHURA, J.:**

For resolution is the Letter-Appeal<sup>[1]</sup> of Senior Inspector (Sr. Insp.) Jerry C. Valeroso (Valeroso) praying that our February 22, 2008 Decision<sup>[2]</sup> and June 30, 2008 Resolution<sup>[3]</sup> be set aside and a new one be entered acquitting him of the crime of illegal possession of firearm and ammunition.

The facts are briefly stated as follows:

Valeroso was charged with violation of Presidential Decree No. 1866, committed as follows:

That on or about the 10<sup>th</sup> day of July, 1996, in Quezon City, Philippines, the said accused without any authority of law, did then and there willfully, unlawfully and knowingly have in his/her possession and under his/her custody and control

One (1) cal. 38 "Charter Arms" revolver bearing serial no. 52315 with five (5) live ammo.

without first having secured the necessary license/permit issued by the proper authorities.

CONTRARY TO LAW.<sup>[4]</sup>

When arraigned, Valeroso pleaded "not guilty."<sup>[5]</sup> Trial on the merits ensued.

During trial, the prosecution presented two witnesses: Senior Police Officer (SPO)2 Antonio Disuanco (Disuanco) of the Criminal Investigation Division of the Central Police District Command; and Epifanio Deriquito (Deriquito), Records Verifier of the Firearms and Explosives Division in Camp Crame. Their testimonies are summarized as follows:

On July 10, 1996, at around 9:30 a.m., Disuanco received a Dispatch Order from the desk officer directing him and three (3) other policemen to serve a Warrant of Arrest, issued by Judge Ignacio Salvador, against Valeroso for a case of kidnapping

with ransom.<sup>[6]</sup>

After a briefing, the team conducted the necessary surveillance on Valeroso checking his hideouts in Cavite, Caloocan, and Bulacan. Eventually, the team members proceeded to the Integrated National Police (INP) Central Police Station in Culiat, Quezon City, where they saw Valeroso about to board a tricycle. Disuanco and his team approached Valeroso. They put him under arrest, informed him of his constitutional rights, and bodily searched him. They found a Charter Arms revolver, bearing Serial No. 52315, with five (5) pieces of live ammunition, tucked in his waist.<sup>[7]</sup>

Valeroso was then brought to the police station for questioning. Upon verification in the Firearms and Explosives Division in Camp Crame, Deriquito presented a certification<sup>[8]</sup> that the subject firearm was not issued to Valeroso, but was licensed in the name of a certain Raul Palencia Salvatierra of Sampaloc, Manila.<sup>[9]</sup>

On the other hand, Valeroso, SPO3 Agustin R. Timbol, Jr. (Timbol), and Adrian Yuson testified for the defense. Their testimonies are summarized as follows:

On July 10, 1996, Valeroso was sleeping inside a room in the boarding house of his children located at Sagana Homes, Barangay New Era, Quezon City. He was awakened by four (4) heavily armed men in civilian attire who pointed their guns at him and pulled him out of the room.<sup>[10]</sup> The raiding team tied his hands and placed him near the faucet (outside the room) then went back inside, searched and ransacked the room. Moments later, an operative came out of the room and exclaimed, "*Hoy, may nakuha akong baril sa loob!*"<sup>[11]</sup>

Disuanco informed Valeroso that there was a standing warrant for his arrest. However, the raiding team was not armed with a search warrant.<sup>[12]</sup>

Timbol testified that he issued to Valeroso a Memorandum Receipt<sup>[13]</sup> dated July 1, 1993 covering the subject firearm and its ammunition, upon the verbal instruction of Col. Angelito Moreno.<sup>[14]</sup>

On May 6, 1998, the Regional Trial Court (RTC), Branch 97, Quezon City, convicted Valeroso as charged and sentenced him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day, as minimum, to six (6) years, as maximum. The gun subject of the case was further ordered confiscated in favor of the government.<sup>[15]</sup>

On appeal, the Court of Appeals (CA) affirmed<sup>[16]</sup> the RTC decision but the minimum term of the indeterminate penalty was lowered to four (4) years and two (2) months.

On petition for review, we affirmed<sup>[17]</sup> in full the CA decision. Valeroso filed a Motion for Reconsideration<sup>[18]</sup> which was denied with finality<sup>[19]</sup> on June 30, 2008.

Valeroso is again before us through this Letter-Appeal<sup>[20]</sup> imploring this Court to once more take a contemplative reflection and deliberation on the case, focusing on

his breached constitutional rights against unreasonable search and seizure.<sup>[21]</sup>

Meanwhile, as the Office of the Solicitor General (OSG) failed to timely file its Comment on Valeroso's Motion for Reconsideration, it instead filed a Manifestation in Lieu of Comment.<sup>[22]</sup>

In its Manifestation, the OSG changed its previous position and now recommends Valeroso's acquittal. After a second look at the evidence presented, the OSG considers the testimonies of the witnesses for the defense more credible and thus concludes that Valeroso was arrested in a boarding house. More importantly, the OSG agrees with Valeroso that the subject firearm was obtained by the police officers in violation of Valeroso's constitutional right against illegal search and seizure, and should thus be excluded from the evidence for the prosecution. Lastly, assuming that the subject firearm was admissible in evidence, still, Valeroso could not be convicted of the crime, since he was able to establish his authority to possess the gun through the Memorandum Receipt issued by his superiors.

After considering anew Valeroso's arguments through his Letter-Appeal, together with the OSG's position recommending his acquittal, and keeping in mind that substantial rights must ultimately reign supreme over technicalities, this Court is swayed to reconsider.<sup>[23]</sup>

The Letter-Appeal is actually in the nature of a second motion for reconsideration. While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby.<sup>[24]</sup>

This is not the first time that this Court is suspending its own rules or excepting a particular case from the operation of the rules. In *De Guzman v. Sandiganbayan*,<sup>[25]</sup> despite the denial of De Guzman's motion for reconsideration, we still entertained his Omnibus Motion, which was actually a second motion for reconsideration. Eventually, we reconsidered our earlier decision and remanded the case to the Sandiganbayan for reception and appreciation of petitioner's evidence. In that case, we said that if we would not compassionately bend backwards and flex technicalities, petitioner would surely experience the disgrace and misery of incarceration for a crime which he might not have committed after all.<sup>[26]</sup> Also in *Astorga v. People*,<sup>[27]</sup> on a second motion for reconsideration, we set aside our earlier decision, re-examined the records of the case, then finally acquitted Benito Astorga of the crime of Arbitrary Detention on the ground of reasonable doubt. And in *Sta. Rosa Realty Development Corporation v. Amante*,<sup>[28]</sup> by virtue of the January 13, 2004 *En Banc* Resolution, the Court authorized the Special First Division to suspend the Rules, so as to allow it to consider and resolve respondent's second motion for reconsideration after the motion was heard on oral arguments. After a re-examination of the merits of the case, we granted the second motion for reconsideration and set aside our earlier decision.

Clearly, suspension of the rules of procedure, to pave the way for the re-examination of the findings of fact and conclusions of law earlier made, is not without basis.

We would like to stress that rules of procedure are merely tools designed to facilitate the attainment of justice. They are conceived and promulgated to effectively aid the courts in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat to substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than to promote justice, it would always be within our power to suspend the rules or except a particular case from its operation.<sup>[29]</sup>

Now on the substantive aspect.

The Court notes that the version of the prosecution, as to where Valeroso was arrested, is different from the version of the defense. The prosecution claims that Valeroso was arrested near the INP Central Police Station in Culiati, Quezon City, while he was about to board a tricycle. After placing Valeroso under arrest, the arresting officers bodily searched him, and they found the subject firearm and ammunition. The defense, on the other hand, insists that he was arrested inside the boarding house of his children. After serving the warrant of arrest (allegedly for kidnapping with ransom), some of the police officers searched the boarding house and forcibly opened a cabinet where they discovered the subject firearm.

After a thorough re-examination of the records and consideration of the joint appeal for acquittal by Valeroso and the OSG, we find that we must give more credence to the version of the defense.

Valeroso's appeal for acquittal focuses on his constitutional right against unreasonable search and seizure alleged to have been violated by the arresting police officers; and if so, would render the confiscated firearm and ammunition inadmissible in evidence against him.

The right against unreasonable searches and seizures is secured by Section 2, Article III 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.

From this constitutional provision, it can readily be gleaned that, as a general rule, the procurement of a warrant is required before a law enforcer can validly search or seize the person, house, papers, or effects of any individual.<sup>[30]</sup>

To underscore the significance the law attaches to the fundamental right of an individual against unreasonable searches and seizures, the Constitution succinctly

declares in Article III, Section 3(2), that "any evidence obtained in violation of this or the preceding section shall be inadmissible in evidence for any purpose in any proceeding."<sup>[31]</sup>

The above proscription is not, however, absolute. The following are the well-recognized instances where searches and seizures are allowed even without a valid warrant:

1. ***Warrantless search incidental to a lawful arrest;***
2. ***[Seizure] of evidence in "plain view."*** The elements 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 have 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;
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;***
7. ***Exigent and emergency circumstances.***<sup>[32]</sup>
8. ***Search of vessels and aircraft; [and]***
9. ***Inspection of buildings and other premises for the enforcement of fire, sanitary and building regulations.***<sup>[33]</sup>

In the exceptional instances where a warrant is not necessary to effect a valid search or seizure, what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.<sup>[34]</sup>

In light of the enumerated exceptions, and applying the test of reasonableness laid down above, is the warrantless search and seizure of the firearm and ammunition valid?

We answer in the negative.

For one, the warrantless search could not be justified as an incident to a lawful arrest. Searches and seizures incident to lawful arrests are governed by Section 13, Rule 126 of the Rules of Court, which reads:

SEC. 13. *Search incident to lawful arrest.* - A person lawfully arrested may be searched for dangerous weapons or anything which may have