

## SECOND DIVISION

**[ G.R. No. 120650, February 21, 2003 ]**

**RENE BOTONA, PETITIONER VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for certiorari, prohibition and injunction assailing the Decision of the Court of Appeals in CA-G.R. No. 14416<sup>[1]</sup> promulgated on November 9, 1994 and the Resolution dated May 24, 1995 denying petitioner's Motion for Reconsideration.

The facts of the case as found by the lower court are as follows:

On February 20, 1991 at about 9:00 in the evening, Rito Bautista was at the waiting shed near the public market at Poblacion Barobo, Surigao del Sur talking with his friends, Mayolito Cuizon and Bonifacio Fructuso. Suddenly, Rene Botona came and pointed a .38 cal. paltik revolver at them and threatened to shoot them. Bautista grappled with Botona for the possession of the gun and succeeded in wresting it from Botona. Thereafter, Bautista rushed to the police station where he reported the incident and turned over said firearm.<sup>[2]</sup>

Botona rushed back to his house, took an M-16 Armalite rifle, and strafed the house where Bautista lives with his parents.<sup>[3]</sup>

Mayolito Cuizon corroborated the testimony of Bautista while SPO3 Leo Asuncion confirmed the fact that the paltik firearm was turned over to him by Bautista.<sup>[4]</sup>

Botona was charged with two counts of Illegal Possession of Firearms under P.D. No. 1866<sup>[5]</sup> under Informations which read as follows:

**"Criminal Case No. L-1112:**

"That on or about the 20<sup>th</sup> day of February, 1991, at 10:00 o'clock in the evening, more or less, in the boundary of Purok 3 and Purok 5 of Poblacion Barobo, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously had in his possession, custody and control one (1) armalite rifle M-16 bearing serial number 9037940, and two (2) pieces of long magazines loaded with 32 rounds of live ammunitions, 27 from one magazine and 5 from the other magazine, without first securing the necessary license or permit from the Director General of the Philippine National Police or competent authority

therefore.

"CONTRARY TO LAW. (Violation of P.D. 1866)"<sup>[6]</sup>

**"Criminal Case No. L-1129:**

"That on or about the 20<sup>th</sup> day of February, 1991, at 9:00 o'clock in the evening more or less at the waiting shed in Purok 3, of poblacion Barobo, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously had in his possession, custody and control one (1) homemade revolver caliber 38, marked Smith and Wesson, two (2) pieces live ammunitions, and three (3) pieces empty shells, without first securing the necessary license or permit from the Director General of the Philippine National Police or competent authority therefor.

"CONTRARY TO LAW. (Violation of PD 1866)." <sup>[7]</sup>

to both of which he pleaded not guilty.

After trial, the Regional Trial Court of Lianga, Surigao del Sur exonerated accused Rene Botona in the first case but found him guilty in the second, thus:

**"I.- IN CRIMINAL CASE NO. L-1112:-**

"On the basis of reasonable doubt and for failure of the prosecution to establish beyond reasonable doubt the guilt of the accused Rene Botona y Ubos, 25 years of age, single, a driver by occupation and resident of Barobo, Surigao del Sur, is hereby adjudged not guilty of the crime of Illegal Possession of Firearm & Ammunitions, as penalized under Section 1, Presidential Decree No. 1866, as charged in the information, and therefore, the criminal indictment against him is dismissed, with costs de oficio. As the M-16 Armalite Rifle with SN 9037940 is covered by a memorandum receipt issued by PNP (formerly PC) authorities, the Court leaves the matter as to said firearm to the sound disposition of the nearest local PNP Unit. The property Bail Bond posted for the provisional release of said accused is ordered cancelled.

**"II.- IN CRIMINAL CASE NO. L-1129:-**

"The Court finds the accused, Rene Botona y Ubos, 25 years of age, single, a driver and a resident of Barobo, Surigao del Sur, GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions, penalized under Section 1, Presidential Decree No.1866, as charged in the information, and is hereby accordingly sentenced to suffer the penalty of Eighteen (18) years, Eight (8) Months, and One (1) Day of reclusion temporal, as minimum, to Twenty (20) Years of reclusion temporal, as maximum, with costs. The .38 Cal. Paltik Danao-made Revolver (Smith & Wesson) is ordered forfeited in favor of the Government and should be turned over to the nearest PNP Command for proper disposition.

"IT IS SO ORDERED." [8]

Assailing his conviction in Criminal Case No. L-1129, the accused went to the Court of Appeals which affirmed the decision of the trial court *in toto*. [9]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner alleges that the appellate court acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when:

- I. "...IT FAILED TO CONSIDER THE TWO CONFLICTING FACTS AND CIRCUMSTANCES ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE PETITIONER HEREIN AND THE OTHER CONSISTENT WITH PETITIONER'S GUILT IN AFFIRMING THE DECISION OF THE LOWER COURT.
- II. "...IT RULED THAT THE BURDEN OF PROVING THE NEGATIVE ALLEGATIONS IN THE INFORMATION LIES WITH THE ACCUSED AND NOT WITH THE PROSECUTION, THUS, VIOLATING THE PROVISIONS OF SEC. 2, RULE 133 OF THE RULES OF COURT AND THE RULINGS ON THE CASE OF PEOPLE VERSUS SAYAT, 222 SCRA 285 AND PEOPLE VERSUS PAJENADO, 31 SCRA 812.
- III. "...IT AFFIRMED THE JUDGMENT OF THE LOWER COURT CONVICTING PETITIONER HEREIN OF ILLEGAL POSSESSION OF FIREARM WHEN THE ELEMENTS OF ILLEGAL POSSESSION AS SHOWN IN P.D. 1866 WERE NOT ESTABLISHED.
- IV. "...IT FAILED TO CONSIDER THAT THERE WAS INCRIMINATION ON THE PART OF PETITIONER WHICH IS STRICTLY PROHIBITED BY LAW." [10]

The Solicitor General asserts that petitioner resorted to the wrong mode of appeal; that the special civil action under Rule 65 is inappropriate because herein petition seeks to review errors of judgment and not of jurisdiction; that petitioner could not resort to Certiorari under Rule 65 when there is a plain, speedy and adequate remedy in the ordinary course of law which is by way of petition for review on certiorari under Rule 45 of the Rules of Court; that the instant petition was filed beyond the fifteen (15) day period to appeal from the order of denial, evincing that this petition was resorted to as a substitute for the lost or lapsed remedy of appeal; [11] that therefore the instant petition should be outrightly dismissed under SC Circular No. 2-90, to wit:

` SC Circular 2-90 provides :

"Subject: Guidelines to be observed in appeals to the Court of Appeals and to the Supreme Court

xxxx

(4) Erroneous Appeal – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be

dismissed.

- (d) No transfer of appeals erroneously taken. – No transfers of appeals erroneously taken to the Supreme Court or Court of Appeals to whichever of these tribunals has appropriate jurisdiction will be allowed; continued ignorance or willful disregard of law on appeals will not be tolerated.

Under ordinary circumstances, and pursuant to the above-quoted Circular, we would have upheld the position of the Solicitor General. However, considering that the present case involves the right to life and liberty of petitioner as enshrined in our Constitution and the assailed decision of the Court of Appeals violates existing jurisprudence, we shall consider this case as an exception to the rules herein invoked by the Solicitor General. We held in *Chua vs. Court of Appeals*:

"Certiorari is an extraordinary remedy available only when there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law. While ordinarily, certiorari is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; (d) or when the questioned order amounts to an oppressive exercise of judicial authority. As early as *Crisostomo vs. Endencia*, we held:

' . . . The remedy by certiorari may be successfully invoked both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy.'"<sup>[12]</sup>

In the case of *Republic vs. PCGG*, we added another exception to the rule, thus:

"Indeed, grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. In one case, this Court ruled that the lower court's resolution was "tantamount to overruling a judicial pronouncement of the highest Court x x x and unmistakably a very grave abuse of discretion."

<sup>[13]</sup>

In resolving the present petition, the only question that really needs to be answered is: Whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming in *toto* the decision of the trial court.

Herein petition is based on the following grounds: (1) the prosecution failed to prove the elements of the crime of Illegal Possession of Firearms because it did not present evidence that the *paltik*, subject of the charge, is not licensed by the Firearms and Explosives Unit (FEU) of the Philippine National Police (PNP); (2) applying the equipoise doctrine, petitioner's version of the story should be given credence for it is the version favorable to the accused; (3) placing on the accused the burden of proving that he has license for the firearm is a violation of the constitutional presumption of innocence; and (4) since prosecution witness Rito