

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 01962, September 22, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARTINIANO LABAJO, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

This is an appeal from the Decision dated March 22, 2011, rendered by the Regional Trial Court of Cebu City, Branch 10^[1], in Criminal Case No. CBU-82659, which found the accused-appellant guilty of the crime of Illegal Possession of Firearms under R.A. No. 8294.

The Procedural and Factual Antecedents

The accused-appellant, Martiniano Labajo a.k.a. "Martin", was charged before the Regional Trial Court of Cebu City, Branch 10 for violation of R.A. 8294, in an Information^[2], the accusatory portion of which, states:

"That on or about the 8th day of March 2008, at around 11:30 in the morning, more or less, at Lawaan 3, Talisay City, 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 under his control, the following item, to wit:

1. One (1) ca. 357 paltik revolver loaded with four (4) live ammunitions (sic) in the cylinder without first obtaining license or permit therefore from competent authority.

CONTRARY TO LAW."

On April 25, 2008, the accused-appellant, duly assisted by counsel, was arraigned of the crime charged against him and entered a plea of "not guilty"^[3]. The trial court conducted pre-trial^[4], then trial on the merits ensued.

Evidence for the prosecution

The prosecution presented PO1 Paul Vaughn Sumiller, SPO4 Ernesto Navales, PO2 Andrew Rellanos and SPO3 Emilecio Agpalza and offered in evidence Exhibits "A" to "K" with submarkings, which were admitted by the trial court in its Order dated September 22, 2009^[5].

The evidence of the prosecution would show that on March 4, 2008, a team from the Cebu Provincial Intelligence Branch (PIB), Cebu Provincial Police Office, led by SPO4 Ernesto Navales, applied for the issuance of a search warrant for violation of Republic Act No. 8294, before 1st Vice Executive Judge Ramon G. Codilla, Jr., against Martiniano Labajo a.k.a. "Martin", residing at Lawaan 3, Talisay City, Cebu^[6]. SPO4 Navales submitted the said application, together with the deposition of applicant, deposition of witnesses^[7], sketch of the house of the subject^[8] and the certification of the FESAGSS, that subject Martiniano Labajo does not appear in the list of approved application to possess firearm^[9]. Consequently, Judge Ramon Codilla issued on March 4, 2008, Search Warrant number 00329-08, directing the police officers to search the residence of Martiniano Labajo, located at Brgy. Lawaan 3, Talisay City, for a .357 caliber revolver, shotgun, caliber .45 pistol and ammunition.^[10]

On March 8, 2008, a team from PIIB, CPPO, led by SPO4 Ernesto Navales, raided the house of Martiniano Labajo at around 11:30 in the evening, and composed of PO2 Andrew Rellanos, PO1 Paul Vaughn Sumiller, PO1 Michael Magallon, PO3 Benjamin Sebellita and SPO1 Isias Cabuenas. Prior to that, the team had a briefing at their office and thereafter, proceeded to the area. Upon arrival, they saw the accused standing in front of his residence with his live-in partner. They immediately approached the accused and held him. Their team leader, SPO4 Navales showed the search warrant to the accused and read to him the contents thereof. *Barangay Tanods* Miguel Rabadon, Julie Torres, and Cosme Demecillo arrived (after having been fetched by one of the members of the raiding team). The assigned searcher, PO1 Vaughn Sumiller, PO2 Andrew Rellanos, the recorder, the *barangay tanods*, the accused and accompanied by his common-law spouse, proceeded to search the ground floor of the two story house, where the rented room of the accused was located.

Sumiller searched the sewing machine, cabinet, the bed, and a backpack that was hanging on the wall. He opened the backpack and found a .357 homemade revolver and five bundles of dried marijuana leaves wrapped in a newspaper. Sumiller handed them to PO1 Michael Magallon, who turned-over these items to the recorder, PO2 Andrew Rellanos. Sumiller continued to search but found no more contraband. Rellanos proceeded to list the confiscated item in an inventory receipt form^[11] and thereafter affixed his signature thereto. The *barangay tanods* who witnessed the search also affixed their signatures. They apprised the accused of his constitutional rights and took photographs of the confiscated items and then brought the accused to the Talisay Police Station. The team leader caused the entry of the raid and arrest of the accused on the police blotter, and marked the confiscated items. They also turned over the accused to the Talisay City Jail, while the confiscated marijuana leaves were forwarded to the PNP Regional Crime Laboratory for laboratory examination.

The prosecution likewise presented in court SPO3 Emilecio Agpalza, who brought with him a certification from FESAGSS that accused is not included in the list of approved firearms holder.^[12] In open court, the witnesses identified that prosecution documents which were marked exhibits. PO2 Rellanos, the recorder of the raiding team, identified the .357 caliber revolver and the four live ammunition.^[13]

Evidence for the defense

The accused-appellant testified that he is a driver residing at Lawaan 3, Talisay City, Cebu. On March 8, 2008, at around 11:30 in the morning, he was outside his house repairing his motorcycle when several persons dressed in civilian clothes arrived and proceeded directly to the second floor of the house. After several minutes, these men went down and proceeded to enter his rented room.

Accused-appellant testified that he tried to stop them since they were checking the things which his wife used for sewing, but two persons held him at his back. They let him sit at his motorcycle, while two persons entered his rented room. The latter later came out of the house and asked for his name. When he told them his name, accused-appellant testified, the two men informed him that they have a search warrant, but never showed him a copy when accused-appellant asked that the warrant be shown to him.

Accused-appellant was then brought to the Talisay City Jail and placed inside a cell. He declared that although he tried to complain, he could not do anything. He added that the policeman showed the confiscated items taken allegedly from his room. In fact, what the policemen were testifying before this Court were all false.^[14]

On cross-examination, accused-appellant admitted that there were several persons who were renting or occupying the room at the second floor. While he was fixing his motorcycle about eight (8) meters from his room, two men went up to the second floor and then went down. These men then entered their room and checked on the rugs and the things inside, so he shouted at them. Suddenly, two men appeared and held him. He turned to complain why he was prevented from entering his room, but was told to wait for the arrival of the *barangay tanods*. He is not familiar with firearms, but he had seen a revolver.^[15]

Ruling of the RTC

The trial court found the prosecution's version of what transpired on March 8, 2008 leading to accused-appellant's arrest more credible than the accused-appellant's protestations that he was framed-up by the police.

The trial court ruled that the testimonies of the prosecution witnesses, that they found a black backpack inside the rented room of the accused-appellant containing one .357 revolver and four (4) live ammunition, to be straightforward, direct, spontaneous and without inconsistencies and therefore credible and entitled to credence and full faith from the court.

The trial court ruled that the accused-appellant's version that he was just repairing his motorcycle on March 8, 2008 when two men suddenly entered his room and examined the things inside without his consent, cannot be given weight, considering the defense's failure to present the accused-appellant's live-in partner or even the *barangay tanods* to corroborate the claim of the accused.

The trial court further ruled that the prosecution was able to prove the elements of illegal possession of firearms. The accused had been identified by prosecution

witnesses to be the same person whom they arrested while they were implementing the search warrant at Lawaan 3, Talisay City, Cebu on March 8, 2008 and the single .357 paltik revolver marked "Power Custom Indep Mo", with four (4) live ammunition, were identified by the prosecution witnesses. The Chief of FESAGSS, P/Supt. Rey Lyndon T. Lawas has issued a Certification dated February 20, 2008, attesting to the fact that the said individual is not licensed to possess firearm and ammunition of any kind.

Thus, on March 22, 2011, the trial court rendered judgment, the dispositive portion of which, states:

"WHEREFORE, PREMISES CONSIDERED, this Court finds the accused MARTINIANO LABAJO, GUILTY of violating Section 1, Republic Act No. 8294. He is hereby sentenced to suffer the indeterminate term of SIX (6) YEARS and ONE (1) DAY of PRISION MAYOR, as MINIMUM, to SEVEN (7) YEARS and TWO (2) MONTHS as MAXIMUM, and to pay a fine of THIRTY THOUSAND (Php30,000.00) PESOS.

The .357 paltik revolver, with four (4) live ammunitions, and the five (5) bundles of dried marijuana leaves with fruiting tops, are ordered confiscated in favor of the government.

SO ORDERED."

On April 5, 2011, accused-appellant timely filed a Notice of Appeal^[16], which was given due course by the trial court in its Order dated May 5, 2011^[17].

The records of this case were transmitted on August 22, 2012^[18]. On September 14, 2012, this Court issued a Notice to File Brief^[19]. Following several extensions, the appellant was able to file brief on April 8, 2013^[20]. The appellee, on the other hand, filed its brief on August 22, 2013^[21]. This case was declared submitted for Decision on February 3, 2014^[22].

Assignment of Errors

The accused-appellant now comes before this Court and makes this lone assignment of error:

"The court a quo erred in convicting accused-appellant despite the failure of the prosecution to establish his guilt beyond reasonable doubt."^[23]

Argument for the Appellant

Accused-appellant argues that firearm seized by the police is of little or no value owing to the irregularity in the issuance of the search warrant. Appellant argues that the search warrant in this case failed to meet the fifth requisite, that it specifically describes the place to be searched and the things to be seized. A designation or description that points out the place to be searched to the exclusion of all others satisfies the constitutional requirement of definiteness. In this case, appellant points out, the policemen first went to the second floor of the two-story house before going down to the room on the first floor that accused-appellant was renting. In other words, the police officers who applied for and implemented the search warrant did not know in which room the accused actually resided.

During the implementation of the search warrant, the prosecution witnesses testified that the raiding team also allegedly found five bundles of dried marijuana leaves wrapped in a newspaper together with the .357 homemade revolver. Therefore, accused-appellant argues, pursuant to Section 1 of R.A. 8294, this case for illegal possession of firearms should never have been filed since the accused-appellant also committed another crime which is possession of illegal drugs.

Argument for the People

The appellee, on the other hand, argues that the prosecution was able to prove all the elements of the crime of illegal possession of firearms, to wit: when the holder thereof 1) possesses a firearm or a part thereof; and 2) lacks authority or license to possess the firearm. The testimonies of the prosecution witnesses, coupled with the object evidence, proved beyond reasonable doubt the existence of the firearm and the ammunition, which were all in the possession of the appellant. Moreover, the prosecution was able to present in evidence the certification issued by the FESAGSS which stated that the appellant is not included in the list of approved applications for possession of firearms and ammunition of any kind, which proves that appellant had no authority to possess the revolver and ammunition found in his room.

Finally, the appellee argues that the accused-appellant cannot assail the validity of the search warrant for the first time on appeal. What appellant should have done was to move to quash the search warrant, which the accused-appellant failed to do. Moreover, the accused-appellant failed to object to the admissibility of the prosecution's evidence when the same was offered before the trial court. Hence, objections to the legality of the search warrant and to the admissibility of the evidence obtained pursuant to such search warrant are deemed waived when not raised during the trial of the case.

Ruling of the Court

After a careful review of the records of this case, this Court finds this appeal to be without merit.

To convict an accused for illegal possession of firearms and explosives under P.D. 1866, as amended by R.A. 8294, two (2) essential elements must be indubitably established: (a) the existence of the subject firearm ammunition or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the