



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 December 2020** which reads as follows:*

“G.R. No. 251981 (*Kelvin Taña y Morados and Roger Baltar y Layague vs. People of the Philippines*). – The Petition fails to sufficiently show that the Court of Appeals (CA) committed reversible error when it rendered its assailed dispositions as to warrant the Court’s exercise of its appellate jurisdiction.

It is a time-honored doctrine that the Court defers to the trial court’s factual findings on the credibility of witnesses in the absence of any clear showing that facts or circumstances have been overlooked that would have altered the outcome of the case. More so when said factual findings carried in full the concurrence of the appellate court, as in this case.¹

Kelvin Taña y Morados (Taña) was charged with, and convicted of, **qualified unlawful possession of small firearm** defined and penalized under Section 28(a) of Republic Act No. 10591 (RA 10591).² It requires the following elements: (1) the existence of the subject firearm; and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.³ Section 28(e)(1)⁴ provides that the penalty of

¹ See *People v. Bautista*, 665 Phil 815 (2011).

² **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

³ *Jacaban v. People*, 756 Phil 523, 531 (2015).

⁴ **Section 28. Unlawful Acquisition, or Possession of Firearms and Ammunition.** xxx

one (1) degree higher shall be imposed on any person who shall unlawfully possess any firearm which is loaded with ammunition or inserted with a loaded magazine.

Roger Baltar (Baltar), on the other hand, was charged with, and convicted of, **unlawful possession of ammunition for small firearm** defined and penalized under Section 28(g) of RA 10591.⁵ It requires the same two (2) elements except that instead of a firearm, the subject is ammunition for small firearm, and the accused who possessed or owned the same does not have the corresponding license therefor.

Here, **the prosecution was able to sufficiently establish the elements of both offenses beyond reasonable doubt.** Police Officer 2 Jessie Bahin (PO2 Bahin), Police Officer I Dominic Billena (PO1 Billena), and Police Officer 3 Jomel Mallari (PO3 Mallari) testified that they received a report about a commotion in Strawberry Bar and Resto involving two (2) armed drunk men, who were later identified as Taña and Baltar (collectively, petitioners). The police officers immediately proceeded to the area where a woman, who identified herself as the bar owner, pointed out petitioners as the drunk men who were causing trouble. The bar owner also reported that petitioners were armed. The police officers approached both men, who were then about to leave on board a motorcycle. They were ordered to raise their hands and alight from the motorcycle. The police officers frisked them and recovered from Taña a handgun with magazine loaded with ammunitions; and from Baltar, a magazine also loaded with ammunitions for small firearm. The police officers consequently arrested them.⁶

Markedly, the negative fact that petitioners had no license or permit to possess the firearm and ammunitions was proven by two (2) separate Certifications both dated June 8, 2016 issued by the Philippine National Police Firearms and Explosives Office.⁷

The trial court and the CA gave full credence to the testimonies of PO2 Bahin, PO1 Billena, and PO3 Mallari, as petitioners both failed to substantiate their story that they confiscated the firearm and ammunitions from a man they had an altercation with and that they held on to them because they intended to surrender them to the police.⁸

(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; xxx

⁵ **Section 28. Unlawful Acquisition, or Possession of Firearms and Ammunition.** – The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows: xxx

(g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. xxx

⁶ *Rollo*, pp. 48-51.

⁷ *Id.* at 49.

⁸ *Id.* at 73-76.

Verily, therefore, the trial court and the CA did not err in finding petitioners guilty of **qualified unlawful possession of small firearm and unlawful possession of ammunition for small firearm, respectively.**

Notably, the incident involving both petitioners happened on April 23, 2016 or within the election period of January 10, 2016 to June 8, 2016. Consequently, petitioners were also charged with, and convicted of, **violation of the election gun ban** under Section 261(q) of Batas Pambansa (BP) Blg. 881, as amended by Section 32, Republic Act No. 7166 (RA 7166), in relation to COMELEC Resolution No. 10015. It requires the following elements: (1) the person is bearing, carrying, or transporting firearms, ammunition, or other deadly weapons; (2) such possession occurs during the election period; and (3) the weapon is carried in a public place.⁹ The burden is on the accused to show that he or she has a written authority from the COMELEC to possess such firearm and/or ammunition.¹⁰

Section 1, Rule II of COMELEC Resolution No. 10015 bears the rules and regulations on the election gun ban, *viz.*:

Section 1. *Prohibited Acts.* – During the Election Period:

- a. **No person shall bear, carry or transport Firearms or Deadly Weapons** outside his residence or place of business, and **in all public places**, including any building, street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same, **unless authorized by the Commission**, through the CBFSP, in accordance with the provisions of this Resolution;
XXXX
- b. **No person or entity shall transport and deliver Firearms and/or its parts, Ammunition and/or its components**, and Explosives and/or its components, **unless authorized by the Commission**, through the CBFSP, in accordance with the provisions of this Resolution. (Emphases supplied)

Here, the existence of the subject firearm and ammunitions was clearly established by the testimony of the prosecution witnesses who categorically declared that they responded to a report of a commotion caused by armed men at a public place, *i.e.*, the Strawberry Bar and Resto, on April 23, 2016 or within the election period of the 2016 national elections. These men turned out to be petitioners from whose possession the police officers recovered: (1) a Llama .380 handgun with magazine loaded with six (6) ammunitions tucked in Taña's waist; and (2) a .380 magazine loaded with seven (7) ammunitions from Baltar's right pocket.¹¹

⁹ Section 261. *Prohibited Acts.* -- The following shall be guilty of an election offense:

XXXX

(q) Carrying firearms outside residence or place of business. – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

¹⁰ *Ahenes v. Court of Appeals*, 544 Phil. 614, 633 (2007).

¹¹ *Rollo*, pp. 48-49.

Significantly, the COMELEC issued two (2) separate Certifications confirming that petitioners had no authority to bear, carry, or transport firearms or other deadly weapons or ammunition during the election period.¹²

Evidently, the trial court and the CA did not err in convicting petitioners of **violation of the election gun ban**.

We now reckon with petitioners' challenge against their warrantless arrest.

It is settled that a warrantless arrest is not a jurisdictional defect and any objection thereto is deemed waived when the person arrested submits to arraignment without raising this objection through an appropriate motion to quash.¹³ Here, petitioners voluntarily submitted to the jurisdiction of the trial court, never objected to the validity of their arrest, went through arraignment, and actively participated in the trial of the cases. In fine, they are deemed to have waived their right to question the validity of their arrest, thus, curing whatever defect, if at all, may have attended it.¹⁴

This waiver though does not extend to petitioners' objection against the admissibility of the evidence¹⁵ borne by the warrantless search on their persons, specifically the subject firearm and ammunitions.

The general rule is there must be a valid search warrant before a law enforcer can validly search or seize a person's house, papers, or effects. The rule, though, admits of exceptions, *viz.*: (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view"; (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "**stop and frisk**" search.¹⁶

A "stop and frisk" search is defined as the act of a police officer to stop a citizen on the street, interrogate him or her, and pat him or her for weapons. The police officer should properly introduce himself or herself and make initial inquiries and approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possible concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons concealed about him or her. Such search and seizure must precede the arrest for this principle to apply.¹⁷

¹² *Id.* at 50-51.

¹³ See *Argana v. People*, G.R. No. 235898, March 13, 2019.

¹⁴ See *Homar v. People*, 768 Phil. 195, 209 (2015).

¹⁵ *Id.*

¹⁶ *People v. Agulay*, 588 Phil. 247, 272-273 (2008).

¹⁷ *Esquitillo v. People*, 643 Phil. 577, 594 (2010).

As applied to petitioners, We quote with approval the relevant disquisition of the Court of Appeal, *viz.*:

Applying the foregoing principles in this case, this Court rules that there was a valid stop-and-frisk action on accused-appellants.

First, the police officers were informed by Sumang, who identified herself as the owner of the bar, that accused-appellants were armed and were the ones causing trouble. This is sufficient justification for the police officers to call the attention of accused-appellants, who at that time were already attempting to leave on board a motorcycle. Considering their experience as police officers and the information given by Sumang, it was reasonable for them to take precautionary measures in dealing with accused-appellants. Hence, the police officers were justified in immediately frisking accused-appellants for concealed weapons.

Second, the police officers noticed that upon their arrival, accused-appellants were about to leave on board a motorcycle; hence, they approached them, blocked their way to prevent them from leaving, and ordered them to raise their hands. Accused-appellants' attempt to flee added suspicion to the police officers.

Third, when the police officers ordered accused-appellants to raise their hands, they noticed that something was bulging from the waist of accused-appellant Kelvin Taña. This further increased the police officers' suspicion. Since they were informed by Sumang that the persons causing trouble at the bar were armed, the police officers assumed that it was a gun. Thus, when the police officers frisked accused-appellants, the search yielded the subject firearm and ammunition.

Taken together, all the circumstances immediately prior to and surrounding the search, there was already probable cause on the part of the police officers that would justify the warrantless search conducted on accused-appellants. The foregoing suspicious circumstances were sufficient enough to incite a genuine reason or a reasonable suspicion on the part of the police officers to believe that accused-appellants were concealing something illegal. Thus, the police officers had the right and duty to frisk accused-appellants, and this led to the recovery of the subject firearms and ammunition in their possession. Clearly, there were more than one reasonable suspicion obtaining in this case that compelled the police officers to conduct a valid stop-and-frisk action on accused-appellants.¹⁸

So must it be.

We come now to the penalty.

The trial court, as affirmed by the Court of Appeals, correctly sentenced **Taña** to an indeterminate¹⁹ penalty of eight (8) years and one (1) day of

¹⁸ *Rollo*, pp: 71-72.

¹⁹ **Act No. 4103, Section 1.** Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly

prision mayor minimum to ten (10) years, eight (8) months and one (1) day of *prision mayor maximum*²⁰ for **qualified unlawful possession of small firearm**.

Baltar, on the other hand, was correctly sentenced to an indeterminate penalty of six (6) years of *prision correccional maximum* to seven (7) years and four (4) months of *prision mayor minimum* for **unlawful possession of ammunition for small firearm**.

For violation of the election gun ban under Section 261(q) of BP Blg. 881, as amended by Section 32 of RA 7166, in relation to COMELEC Resolution No. 10015, the trial court, as affirmed by the CA, properly sentenced both **petitioners** to an indeterminate penalty of one (1) year as minimum to three (3) years as maximum, without the benefit of probation and to suffer deprivation of the right to suffrage. In addition, they ought to be disqualified from holding public office.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated September 20, 2019 in CA-G.R. CR No. 42238 is **AFFIRMED with MODIFICATION**, thus:

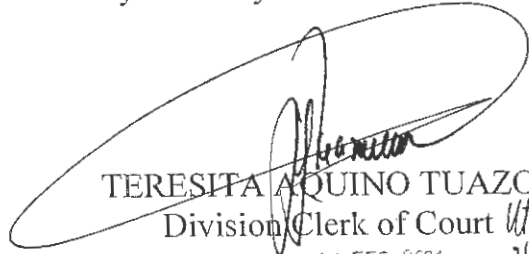
- 1) **KELVIN TAÑA y MORADOS** is found guilty of **qualified unlawful possession of small firearm**. He is sentenced to an indeterminate penalty of eight (8) years and one (1) day of *prision mayor minimum* to ten (10) years, eight (8) months, and one (1) day of *prision mayor maximum*.
- 2) **ROGER BALTAR y LAYAGUE** is found guilty of **unlawful possession of ammunition for small firearm**. He is sentenced to an indeterminate penalty of six (6) years of *prision correccional maximum* to seven (7) years and four (4) months of *prision mayor minimum*.
- 3) **KELVIN TAÑA y MORADOS** and **ROGER BALTAR y LAYAGUE** are found **GUILTY** of violation of **Section 261(q) of Batas Pambansa Bilang 881, as amended by Section 32 of Republic Act Number 7166, in relation to Commission on Elections Resolution Number 10015**. They are sentenced to an indeterminate penalty of one (1) year as minimum to three (3) years as maximum, without the benefit of probation, with deprivation of their right to suffrage and disqualification from holding public office.
- 4) The seized firearm, including the magazines and ammunitions, are declared forfeited in favor of the government. The Branch Clerk of Court is directed to immediately transmit the subject firearm and ammunitions to the Firearms and Explosives Office, Camp Crame, Quezon City, for proper disposition.

imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

²⁰ *Kanapi v. People*, G.R. No. 246762, August 28, 2019.

SO ORDERED." (Perlas-Bernabe, S.A.J., on official leave; Gesmundo, J., Acting Chairperson, per Special Order No. 2805 dated December 1, 2020; Rosario, J., designated additional member per Special Order No. 2797 dated November 5, 2020)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 16 FEB 2021 2/16

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 (Crim. Case Nos. 16-478 to 16-481)

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*with copy of CA Decision dated 30 September 2019.
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