



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

RAUL B. ESCALANTE,  
Petitioner,

G.R. No. 192727

Present:

SERENO, CJ.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES and  
THE HONORABLE COURT OF  
APPEALS, FORMER SPECIAL  
TWENTIETH DIVISION and  
EIGHTEENTH DIVISION, COURT  
OF APPEALS, CEBU CITY,  
Respondents.

Promulgated:

JAN 09 2013

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RESOLUTION

REYES, J.:

Nature of the Petition

Before this Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside the Decision<sup>1</sup> dated June 24, 2008 and Resolution<sup>2</sup> dated March 4, 2009 issued by the Court of Appeals

<sup>1</sup> Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Florito S. Macalino, concurring; *rollo*, pp. 19-33.

<sup>2</sup> Id. at 35-42.

(CA) in CA-G.R. CR No. 27673 which, *inter alia*, affirmed the conviction of Raul B. Escalante (petitioner) for violation of Section 261 (q) of Batas Pambansa Blg. 881 (BP 881), otherwise known as the “Omnibus Election Code of the Philippines”.

### **The Antecedent Facts**

The instant case stemmed from two (2) separate Informations that were filed with the Regional Trial Court (RTC) of Calbayog City, Samar against the petitioner, charging him for violation of Section 261 (q) of BP 881 (Election Gun Ban) and Section 1 of Presidential Decree (P.D.) No. 1866,<sup>3</sup> as amended (Illegal Possession of Firearms and Ammunitions). The first Information<sup>4</sup> dated August 23, 1995, docketed as Criminal Case No. 2074, reads:

The undersigned Prosecutor II of Samar accuses MAYOR RAUL ESCALANTE for VIOLATION OF SECTION 261, PARAGRAPH (Q) OF THE OMNIBUS ELECTION CODE, AS AMENDED BY SECTION 32, REPUBLIC ACT 7166, committed as follows:

That on or about the 3<sup>rd</sup> day of April, 1995, at about 11:00 o'clock in the evening, at *Barangay Biasong*, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, during the Election Period of the May 8, 1995 Election, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) .45 caliber pistol, without first having obtained the proper license and/or permit from the Comelec.

CONTRARY TO LAW.<sup>5</sup>

The second Information<sup>6</sup> dated June 16, 2000, docketed as Criminal Case No. 3824, reads:

The undersigned Assistant Provincial Prosecutor I of Samar accuses Raul Escalante for Illegal Possession of Firearm (P.D. 1866), as amended by Republic Act No. 8294, committed as follows:

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<sup>3</sup> Decree Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In Acquisition or Disposition of Firearms, Ammunition or Explosives.

<sup>4</sup> *Rollo*, pp. 43-44.

<sup>5</sup> *Id.* at 43.

<sup>6</sup> *Id.* at 46-47.

That on or about the 3<sup>rd</sup> day of April, 1995, at nighttime, at *Barangay Biasong*, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to possess and without being authorized by law, did then and there wilfully, unlawfully, feloniously and illegally have in his possession, custody and control one (1) caliber .45 pistol loaded with live ammunition, in a public place outside of his residence, without first securing the necessary permit to possess the same from the competent authority, as required by law.

CONTRARY TO LAW.<sup>7</sup>

The two cases were consolidated and jointly tried by the RTC as the crimes charged against the petitioner arose from the same incident. Upon arraignment, the petitioner pleaded not guilty to both charges.<sup>8</sup>

During the pre-trial conference, the petitioner admitted the following facts: *first*, that he was not issued any license to possess any firearm; and *second*, that April 3, 1995 fell within the election gun ban period imposed by the Commission on Elections (COMELEC).<sup>9</sup>

Trial on the merits ensued thereafter.

### ***The Prosecution's Version***

The petitioner, then the Municipal Mayor of Almagro, Samar, was the guest of honor during the fiesta celebration in *Barangay Biasong* that was held on April 3, 1995. Towards the end of the program, the emcee called on the petitioner and Ina Rebuya to crown the fiesta queen. Thereupon, the petitioner went to fetch Ina Rebuya who was seated together with Atty. Felipe Maglana, Jr. (Atty. Maglana) and the other members of the rival political party. It was then that Atty. Maglana noticed that the petitioner had a firearm tucked on his waist.<sup>10</sup>

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<sup>7</sup> Id. at 46.

<sup>8</sup> Id. at 20.

<sup>9</sup> Id. at 20-21.

<sup>10</sup> Id. at 21.

After the crowning ceremony, the petitioner delivered a speech, stating that he had never won at *Barangay Biasong* in any election. This caught the ire of a group of supporters of the rival political party who then shouted invectives at the petitioner.<sup>11</sup>

Shamed by the insults hurled at him, the petitioner cut short his speech and, thereafter, went back to his table. However, the mocking continued. Thereupon, the petitioner, with the loaded firearm in hand, went to the table occupied by his political rivals. He then stared at Atty. Maglana and thereafter fired a shot upwards, causing the crowd to scamper for safety. The petitioner's bodyguards immediately took hold of his hand to prevent him from firing another shot. Consequently, Ali Prudenciado, a former policeman and then, a *kagawad*, disarmed the petitioner.<sup>12</sup>

The following morning, the Chief of Police of Almagro, Samar entered the incident into the police blotter as an "accidental firing".<sup>13</sup>

### ***The Defense's Version***

The petitioner denied that he was in possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay Biasong*. He claimed that, while he was delivering his speech therein, a group of people were shouting insults at him. Not wanting to aggravate the situation, the petitioner abruptly ended his speech and went to the group to ask them not to disturb the festivities.<sup>14</sup>

The group, however, continued to mock the petitioner, prompting PO3 Conrado Unajan (PO3 Unajan) to draw his firearm from his holster to pacify the unruly crowd. When the petitioner saw this, he tried to take the firearm away from PO3 Unajan and, in the process, a shot was accidentally fired.

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<sup>11</sup> Id.

<sup>12</sup> Id. at 21-22.

<sup>13</sup> Id. at 22.

<sup>14</sup> Id.

Thereafter, the petitioner was able to take hold of the firearm and, together with PO3 Unajan, went back to his table. He then returned the firearm to PO3 Unajan.<sup>15</sup>

### **The RTC's Decision**

On May 23, 2003, the RTC rendered a judgment<sup>16</sup> finding the petitioner guilty beyond reasonable doubt of the crimes of violation of election gun ban and illegal possession of firearms and ammunitions. The dispositive portion of the RTC's decision reads:

WHEREFORE AND IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused, Raul Escalante, GUILTY beyond reasonable doubt of the crimes of Illegal Possession of Firearm and Ammunition and for Violation of Section 261, Par. (q) of the Omnibus Election Code for which he is hereby sentenced (1) in Criminal Case No. 3824 to an Indeterminate Penalty of imprisonment ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of *prision correccional*, and to pay a fine of [P]15,000.00 and to pay the costs, and (2) in Criminal Case No. 2074, he is hereby sentenced to a straight penalty of ONE (1) YEAR imprisonment and to pay the costs.

IT IS SO ORDERED.<sup>17</sup>

The RTC found the testimonies of the prosecution witnesses as to the petitioner's possession of a firearm during the said incident to be categorical and straightforward and should thus be accorded full weight and credit. The RTC likewise disregarded the petitioner's claim that it was PO3 Unajan who was in possession of the firearm, asserting that the same is belied by the respective affidavits executed by the officials of *Barangay Biasong* and the report executed by the Chief of Police of Almagro.

The petitioner appealed to the CA, asserting that the RTC erred in convicting him for the crimes charged since the prosecution failed to

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<sup>15</sup> Id. at 22-23.

<sup>16</sup> Id. at 49-59.

<sup>17</sup> Id. at 59.

establish the following: (1) the existence of the firearm which is the *corpus delicti*; and (2) the absence of a license or permit for the firearm.

### **The CA's Decision**

On June 24, 2008, the CA rendered the herein assailed decision<sup>18</sup> which affirmed *in toto* the May 23, 2003 Judgment of the RTC. The CA held that the prosecution was able to establish the existence of the firearm notwithstanding that it was not presented as evidence. It pointed out that the straightforward and positive testimonies of the prosecution witnesses on the petitioner's possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay Biasong* and the circumstances surrounding it had amply established the *corpus delicti*. In any case, the CA asserted that in an indictment for illegal possession of firearms and ammunitions and violation of election gun ban, the production of the firearm itself is not required for conviction.

Further, the CA held that there was no necessity on the part of the prosecution to prove that the petitioner had no license or permit to possess a firearm since the same had already been admitted by the petitioner during the trial.

The petitioner sought a reconsideration of the June 24, 2008 Decision of the CA, maintaining that the prosecution failed to substantiate the elements of the crimes charged against him. Additionally, the petitioner averred that Criminal Case No. 3824 for illegal possession of firearms and ammunitions should be dismissed pursuant to the ruling of this Court in *Agote v. Judge Lorenzo*<sup>19</sup> which declared that an accused is not liable for illegal possession of firearm if the firearm was used in the commission of an offense such as a violation of the election gun ban.

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<sup>18</sup> Supra note 1.  
<sup>19</sup> 502 Phil. 318 (2005).

On March 4, 2009, the CA issued a resolution<sup>20</sup> which partly granted the petitioner's motion for reconsideration, the decretal portion of which reads:

**WHEREFORE**, the Motion for Reconsideration dated July 18, 2008 is **PARTLY GRANTED**. Criminal Case No. 3824 is **DISMISSED** and accused-appellant's conviction in Criminal Case No. 2074 for Violation of Section 261, par. (q) of the Omnibus Election Code, **AFFIRMED**.

**SO ORDERED.**<sup>21</sup>

The CA ruled that under prevailing jurisprudence there can be no separate offense of simple illegal possession of firearm if the unlicensed firearm is used in the commission of any crime. Considering that the petitioner was convicted of violation of election gun ban, the CA held that he can no longer be convicted for illegal possession of firearm. Nevertheless, the CA found no reason to reverse the conviction of the petitioner for violation of election gun ban.

On April 7, 2009, the petitioner, with leave of court, filed a "Second Partial Motion for Reconsideration of Judgment for Violation of the Omnibus Election Code only". On May 5, 2010, the CA issued a resolution denying the second partial motion for reconsideration filed by the petitioner.

Undaunted, the petitioner filed the instant petition.

### **Issue**

The petitioner submits a lone issue for this Court's resolution:

[WHETHER] THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RESOLVED TO

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<sup>20</sup> Supra note 2.

<sup>21</sup> Id. at 42.

DENY THE APPEAL FILED BY THE PETITIONER DESPITE THE FACT THAT ONE OF THE ESSENTIAL ELEMENTS OF THE OFFENSE OF VIOLATION OF COMELEC GUN BAN IS ABSENT.<sup>22</sup>

### **The Court's Ruling**

The petition is dismissed.

The petitioner committed a serious procedural *faux pas* by filing before this Court a petition for *certiorari* under Rule 65, when the proper remedy should have been a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review under Rule 45, which would be but a continuation of the appellate process over the original case.<sup>23</sup> The period to file a petition for review on *certiorari* is 15 days from notice of the decision appealed from or of the denial of the petitioner's motion for reconsideration.<sup>24</sup>

Here, the petitioner received a copy of the CA's May 5, 2010 Resolution, which denied his second motion for reconsideration, on May 20, 2010, thus, he only had until June 4, 2010 to file a petition for review on *certiorari* with this Court. This he failed to do.

"The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and, hence,

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<sup>22</sup> Rollo, p. 9.

<sup>23</sup> See *Fortune Guarantee and Ins. Corp. v. Court of Appeals*, 428 Phil. 783, 791 (2002).

<sup>24</sup> Rules of Court, Rule 45, Section 2.



unappealable.”<sup>25</sup> Thus, the petitioner’s failure to file a petition for review under Rule 45 within the reglementary period rendered the CA’s June 24, 2008 Decision, as modified by its March 4, 2009 Resolution, final and executory.

It is at once evident that the instant *certiorari* action is merely being used by the petitioner to make up for his failure to promptly interpose an appeal from the CA’s June 24, 2008 Decision and March 4, 2009 Resolution. “However, a special civil action under Rule 65 cannot cure petitioner’s failure to timely file a petition for review on *Certiorari* under Rule 45 of the Rules of Court.”<sup>26</sup> It is settled that a special civil action for *certiorari* will not lie as a substitute for the lost remedy of appeal, especially if such loss or lapse was occasioned by one’s own neglect or error in the choice of remedies.<sup>27</sup>

In any case, assuming *arguendo* that a petition for *certiorari* is the proper remedy, the petition would still be dismissed.

The petitioner claimed that the CA gravely abused its discretion when it affirmed his conviction for violation of election gun ban considering that the fact of his possession of the firearm was not sufficiently established. He averred that the firearm, alleged to be possessed by him during the incident, was in fact in the possession of PO3 Unajan and that it was only when he wrestled the firearm away from the latter that he was able to possess it. His possession of the firearm, the petitioner contends, is merely incidental and would not suffice to convict him for violation of election gun ban.

Basically, the petitioner asks this Court to overturn the factual findings of the RTC and the CA for alleged misapprehension of evidence.

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<sup>25</sup> *Lapulapu Devt. & Housing Corp. v. Group Mgt. Corp.*, 437 Phil. 297, 314 (2002); citation omitted.

<sup>26</sup> *Talento v. Escalada, Jr.*, G.R. No. 180884, June 27, 2008, 556 SCRA 491, 498.

<sup>27</sup> See *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 166.

However, “it is settled that questions of fact cannot be raised in an original action for *certiorari*.”<sup>28</sup> Only established or admitted facts can be considered.<sup>29</sup>

That the petitioner was in possession of a firearm with live ammunition outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority therefor is a finding of fact by the RTC and the CA which cannot be disturbed by this Court in this original action for *certiorari*.

Moreover, “it has been held time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA.”<sup>30</sup> Here, the Court sees no compelling reason to depart from this rule.

The Court notes, however, that the lower courts erred in imposing the applicable penalty against the petitioner. Finding the petitioner guilty of the offense of violation of election gun ban, the RTC imposed upon him the straight penalty of one (1) year imprisonment. The penalty imposed by the RTC was affirmed by the CA. Section 264 of BP 881, in part, reads:

Sec. 264. *Penalties.* – Any person found guilty of any election offense under this Code shall be punished with imprisonment of **not less than one year but not more than six years** and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. x x x. (Emphasis ours)

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<sup>28</sup> *Korea Technologies Co., Ltd. v. Lerma*, G.R. No. 143581, January 7, 2008, 542 SCRA 1, 33; citation omitted.

<sup>29</sup> *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006); citation omitted.

<sup>30</sup> *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 199; citation omitted.

On the other hand, Section 1 of the Indeterminate Sentence Law<sup>31</sup> provides:

Sec. 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 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.

Applying the Indeterminate Sentence Law, the imposable penalty for violation of the election gun ban should have a maximum period, which shall not exceed six (6) years, and a minimum period which shall not be less than one (1) year. Accordingly, the RTC and the CA erred in imposing a straight penalty of one (1) year imprisonment against the petitioner.

Nevertheless, considering that the CA's June 24, 2008 Decision and March 4, 2009 Resolution had already attained finality on account of the petitioner's failure to timely file a petition for review on *Certiorari* under Rule 45, the Court may no longer modify the penalty imposed by the lower courts no matter how obvious the error may be. "Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."<sup>32</sup>

**WHEREFORE**, in consideration of the foregoing disquisitions, the petition is **DISMISSED**. The Decision dated June 24, 2008 and Resolution


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<sup>31</sup> Act No. 4103, as amended by Act No. 4225.

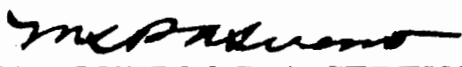
<sup>32</sup> *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

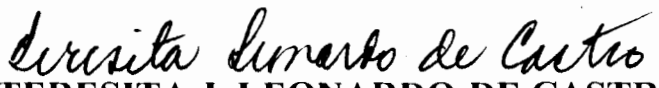
dated March 4, 2009 of the Court of Appeals in CA-G.R. CR No. 27673 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice