



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **26 April 2021** which reads as follows:*

**“G.R. No. 249125 (*Allan Liwanag y Liwanag a.k.a. “Allan Liwanag” v. People of the Philippines*).** – The Court resolves to deny Petitioner Allan Liwanag y Liwanag’s (Liwanag) Petition for Review on *Certiorari* for failure to sufficiently show that the Court of Appeals committed reversible error in its assailed Decision<sup>1</sup> dated February 18, 2019 and Resolution<sup>2</sup> dated August 23, 2019 as to warrant the exercise of the Court’s appellate jurisdiction.

**1. Liwanag is estopped from raising the alleged illegality of his warrantless arrest.**

Liwanag claimed that the prosecution had no evidence to charge him with illegal possession of firearm and ammunition. He objected to the admissibility of the firearm and live ammunition in view of his alleged illegal arrest. However, he admits that he did not raise the issue before his arraignment, and instead, he voluntarily entered his plea of not guilty and actively participated in the trial.

In many instances, the Court has ruled that when an accused never objected to the irregularity of his arrest before his arraignment, pleaded not guilty upon arraignment, actively participated in the trial of the case he/she is

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<sup>1</sup> *Rollo*, pp. 32-43.

<sup>2</sup> *Id.* at 45-46.

considered to have properly and voluntarily submitted himself/herself to the jurisdiction of the trial court and waived his/her right to question the validity of his arrest.<sup>3</sup>

Record shows here that Liwanag never objected to the legality of his arrest prior to or even during his arraignment. With the assistance of his counsel, he even pleaded not guilty and actively participated in the trial by conducting a cross-examination of the witnesses against him. His actions showed that he voluntarily submitted him to the jurisdiction of the trial and was therefore deemed to have waived his right to contest the validity of his arrest.

However, a waiver of illegal arrest is not a waiver of illegal search. Thus, while the accused has already waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search.<sup>4</sup> Nevertheless, records show that the Court of Appeals correctly ruled that the warrantless seizure was validly effected on Liwanag.

**2. The gun and live ammunition  
were admissible in evidence  
because there was a valid  
warrantless seizure.**

Jurisprudence recognizes exceptional instances when warrantless searches and seizures are considered permissible: (1) warrantless search incidental to a lawful arrest; (2) seizure of evidence in “plain view;” (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.<sup>5</sup>

Liwanag invoked *People v. Bolasa*,<sup>6</sup> claiming that the attendant circumstances did not justify a warrantless arrest and seizure. Were it not for the police intentionally peeping through the shanty’s window, the police would not have discovered the gun which, was tucked in Liwanag’s waist.

In *Bolasa*, the Court held that the arrests and the subsequent searches and seizures were invalid as the arresting officers had no personal knowledge that the people in the house were committing a crime. The police were merely tipped off by an informant that people were packing drugs in a certain house. Acting on the tip, the police officers peeked through the window of the house and saw a man and a woman repacking marijuana. The officers barged in and introduced themselves as police officers, and thereafter, arrested the pair.

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<sup>3</sup> See *Villanueva v. People*, 747 Phil. 40, 46 (2014).

<sup>4</sup> *Id.*

<sup>5</sup> See *People v. Yanson*, G.R. No. 238453, July 31, 2019.

<sup>6</sup> 378 Phil. 1073 (1999).

But here, the Court of Appeals found the warrantless seizure to be valid and consequently admitted the evidence obtained as a consequence. It ruled that all the elements of plain view doctrine were clearly established, thus:

The plain view doctrine applies when the following requisites concur: (1) [the] law enforcement officers in search of [the] evidence have a prior justification for an intrusion or are in a position from which they can view a particular area; (2) the discovery of the evidence in plain view is inadvertent; and (3) it is immediately apparent to the officers that the item they observed may be evidence of a crime, a contraband or is otherwise subject to seizure.

Here, all the elements are present. The police officers are conducting an anti-criminality patrol when they were pointed to a shanty where an alleged pot session was ongoing. The shanty's windows were partially opened so PO1 Christian Jay Bullecer was able to confirm that a pot session was indeed ongoing inside. PO1 Bullecer also saw appellant in possession of a firearm. As such, the policemen waited outside until appellant came out. Once appellant was outside, SPO1 Boy Niño Baladjay saw in plain view that the former was walking in public with a gun tucked in the waistband of his short pants. It was only then that they seized the subject gun and effected appellant's arrest.<sup>7</sup>

The plain view doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.<sup>8</sup> In *Valeroso v. Court of Appeals*,<sup>9</sup> citing *People v. Cubcubin, Jr.*<sup>10</sup> and *People v. Leangsiri*,<sup>11</sup> the Court enunciates:

What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which[,] he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused — and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.

Unlike in *Bolasa*, the police here were already in the area conducting a legitimate anti-criminality campaign when a barangay official approached and

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<sup>7</sup> *Rollo*, pp. 41-42.

<sup>8</sup> *See Valeroso v. Court of Appeals*, 614 Phil. 236, 253 (2009).

<sup>9</sup> *Id.*

<sup>10</sup> 413 Phil. 249, 272 (2001).

<sup>11</sup> 322 Phil. 226, 249-250 (1996).

informed them of an ongoing pot session. Upon verifying the information, they inadvertently chanced upon Liwanag in possession of a firearm. The object was in plain sight – he was shirtless, and the gun was visibly seen tucked in his waist. Too, unlike in *Bolasa*, the police did not barge in the shanty to get hold of the evidence. They waited outside until Liwanag came out of the house with the gun still tucked in his waist and in plain view of the police. It was only then that they arrested Liwanag and seized the gun.

As there was a valid warrantless seizure of the firearm and live ammunition, the same are admissible in evidence against Liwanag. Therefore, the prosecution sufficiently established all the elements of the crime charged against him. He possessed the gun and live ammunition without any authority as certified by the Firearms and Explosives Office of the Philippine National Police.

Too, his defense of denial and frame-up was unsubstantiated and failed to overcome the presumption of regularity in favor of the police. Both the trial court and Court of Appeals gave credence to the factual narration of events by the police officers. As has been repeatedly held, credence shall be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary; more, in the absence of proof of motive to falsely impute such a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the accused's self-serving and uncorroborated claim of frame up.<sup>12</sup>

Thus, we affirm the findings of the Court of Appeals on the guilt of petitioner beyond reasonable doubt, *viz.*:

In [the] light of the strong evidence against him, all appellant could offer in his defense is that of denial, which is self-serving, unconvincing, and uncorroborated. It is well settled that denial is an intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility. The court *a quo* likewise correctly pointed out that appellant's live-in partner, the only person who could corroborate appellant's defense, has neither given a name nor was called to the witness stand to support appellant's version of events.<sup>13</sup>

### 3. Computation of penalty

Liwanag was charged with violation of Section 28(a) of Republic Act No. 10591 (RA 10591) in relation to Section 28(e-1), where the penalty is as follows:

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<sup>12</sup> See *People v. Macalaba*, 443 Phil. 565, 578-579 (2003).

<sup>13</sup> *Rollo*, p. 42.

**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

- (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; x x x (Emphases supplied)

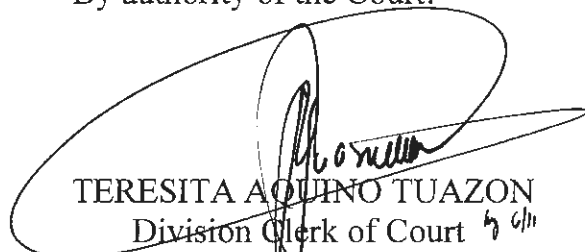
Applying the Indeterminate Sentence Law and conformably with *People v. Simon*<sup>14</sup> on the application of penalties on offenses punishable by special laws, the Court of Appeals correctly sentenced Liwanag to eight (8) years and one (1) day of *prision mayor* as minimum to ten (10) years, eight (8) months and one (1) day of *prision mayor* as maximum, in the absence of any mitigating or aggravating circumstance.

**ACCORDINGLY**, the petition is **DENIED**. The Decision dated February 18, 2019 and Resolution dated August 23, 2019 of the Court of Appeals in CA-G.R. CR No. 40982 are **AFFIRMED**.

Allan Liwanag y Liwanag a.k.a. “Allan Liwanag” is found guilty of violation of Section 28(a) in relation to Section 28(e-1) of Republic Act No. 10591. He is sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum, to ten (10) years, eight (8) months, and one (1) day of *prision mayor*, as maximum.

**SO ORDERED.”** (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021)

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court

11 JUN 2021

<sup>14</sup> 304 Phil. 725 (1994).

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