



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

EDIGARDO  
ROBERTO  
GENEROSO  
"TAPOL",

GEROCHE,  
GARDE and  
MARFIL alias

Petitioners,

- versus -

G.R. No. 179080

Present:

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

Promulgated:

PEOPLE OF THE PHILIPPINES,  
Respondent.

November 26, 2014

X ----- *[Signature]* ----- X

DECISION

PERALTA, J.:

This is an appeal from the Decision<sup>1</sup> dated November 18, 2005 and Resolution<sup>2</sup> dated June 19, 2007 of the Court of Appeals (CA) in G.R. CR No. 26418, which set aside the November 15, 2001 Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 17, Kidapawan City, Cotabato.

Petitioners Edigardo Geroche, Roberto Garde and Generoso Marfil alias "Tapol" were charged with the crime of Violation of Domicile under Article 128 of the Revised Penal Code (RPC).<sup>4</sup> The Information dated May 3, 1990 reads:

<sup>1</sup> Penned by Associate Justice Romulo V. Borja, with Associate Justices Myrna Dimaranan Vidal and Ricardo R. Rosario concurring; *rollo*, pp. 25-36.

<sup>2</sup> *Rollo*, pp. 38-39.

<sup>3</sup> Penned by Judge Rodolfo M. Serrano (Records, pp. 326-332; *id.* at 17-23).

<sup>4</sup> Art. 128. *Violation of domicile*. – The penalty of *prision correccional* in its minimum period shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the

*[Signature]*

The undersigned accuses EDIGARDO GEROCHE, ROBERTO GARDE AND GENEROSO MARFIL Alias "TAPOL" of the crime of Violation of Domicile, committed as follows:

That at about 10:00 o'clock in the evening of May 14, 1989, at Sitio New Lantawan, Barangay Greenhills, Municipality of President Roxas, Province of Cotabato, Philippines, the above-named accused EDIGARDO GEROCHE, being a Barangay Captain and the rest being CAFGUs, hence, persons in authority, conspiring, confederating and mutually helping one another, armed with garand rifles, did then and there, wilfully, unlawfully and feloniously, without proper judicial order, entered the house of ROBERTO MALLO by forcibly breaking the door of said house against the will of the occupants thereof, search the effects of the house without the previous consent of the owner and then mauled one of the occupant BARILIANO LIMBAG inflicting injuries to the latter.

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

During the arraignment on November 5, 1990, all the petitioners pleaded *not guilty*.<sup>6</sup> Thereafter, trial ensued.

Baleriano Limbag (*Baleriano*) testified that the crime happened around 10:00 o'clock in the evening of May 14, 1989 inside the house which he already bought from Roberto Mallo. He roused from sleep when petitioners, who were not armed with search warrant, suddenly entered the house by destroying the main door. The petitioners mauled him, striking with a garand rifle, which caused his injuries. They looked for firearms but instead found and took away his airgun.

Roberto Limbag, Baleriano's nephew who was living with him, witnessed the whole incident and corroborated his testimony.

Aside from presenting SPO4 Felomino Calfoforo, the Subpoena and Warrant Officer of President Roxas Police Station who testified on the police blotter, Dr. Antonio Cabrera also took the witness stand for the prosecution. Essentially, he affirmed the medical certificate that he issued. His findings indicated that Baleriano suffered hematoma on the left side of the nose, back portion of the body at the level of the hip region, and back portion at the right side of the scapular region as well as abrasion on the

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previous consent of such owner, or having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

If the offense be committed in the night-time, or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be *prision correccional* in its medium and maximum periods.

<sup>5</sup> Records, p. 31.

<sup>6</sup> *Id.* at 36.

right side of the breast and left side of the body at the axillary region.<sup>7</sup> Dr. Cabrera opined that the injuries inflicted would heal from seven to ten days.<sup>8</sup>

For the defense, petitioners denied the crime charged, declaring in unison that they were in their respective houses the entire evening of May 14, 1989. They alleged, however, that the night before, on May 13, 1989, they conducted a roving foot patrol, together with other barangay officials, due to the rampant cattle rustling in the area. At the time, they recovered a stolen carabao owned by a certain Francisco Pongasi<sup>9</sup> from three unidentified persons who managed to escape.

On November 15, 2001, the trial court found petitioners guilty beyond reasonable doubt of the crime of Less Serious Physical Injuries under the Article 265 of the RPC. They were sentenced to suffer the penalty of imprisonment of *arresto mayor* maximum, that is, four (4) months and one (1) day to six (6) months. According to the RTC, the prosecution failed to prove that petitioners are public officers, which is an essential element of Article 128 of the RPC. It held:

The prosecution who has that *onus probandi* failed to prove one of the essential elements of the crime; on the issue of whether or not all the accused were public officers; while it is true that accused were named CVO's and the other as a barangay captain and that even if the same were admitted by them during their testimony in open court, such an admission is not enough to prove that they were public officers; it is for the prosecution to prove by clear and convincing evidence other than that of the testimony of witnesses that they were in fact public officers; there exist a doubt of whether or not all the accused were in fact and in truth public officers; doubts should be ruled in favor of the accused; that on this lone and essential element the crime charged as violation of domicile is ruled out; that degree of moral certainty of the crime charged was not established and proved by convincing evidence of guilt beyond reasonable doubt; x x x.<sup>10</sup>

Petitioners elevated the case to the CA, which, on November 18, 2005, set aside the trial court's judgment. While it agreed with both parties that petitioners should not be convicted for Less Serious Physical Injuries, the CA still ruled that they are guilty of Violation of Domicile considering their judicial admissions that they were barangay captain (in the case of Geroche) and part of the Citizen Armed Forces Geographical Unit (in the case of Garde and Marfil). The dispositive portion of the assailed Decision states:

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<sup>7</sup> Records, p. 4.

<sup>8</sup> TSN, December 7, 1993, p. 4. (*Id.* at 140).

<sup>9</sup> Spelled as "Pungasi" in some parts of the Records (*See* records, pp. 318-319).

<sup>10</sup> Records, p. 331; *Rollo*, p. 22.

WHEREFORE, pursuant to applicable law and jurisprudence on the matter and the evidence on hand, the appealed decision is hereby SET ASIDE and a new one entered finding the accused-petitioners GUILTY beyond reasonable doubt of the crime of Violation of Domicile under Article 128 of the Revised Penal Code and sentencing them to an indeterminate penalty of Four (4) Months, One (1) Day of *arresto mayor* maximum to Six (6) Months and One (1) Day of *prision [correccional]* minimum with the accessory penalty of suspension from public office and from the right to follow a profession or calling pursuant to Article 43 of the Revised Penal Code.

SO ORDERED.<sup>11</sup>

Petitioners' motion for reconsideration was denied; hence, this petition. They argue that there is double jeopardy since the trial court already acquitted them of Violation of Domicile and such judgment, being now final and executory, is *res judicata*. Petitioners insist that their appeal before the CA is limited to their conviction for the crime of Less Serious Physical Injuries, focusing their arguments and defense for acquittal from said crime, and that the CA violated their constitutional right to due process when it convicted them for Violation of Domicile.

We deny.

An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.<sup>12</sup> When an accused appeals from the sentence of the trial court, he or she waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate.<sup>13</sup> An appeal confers upon the appellate court jurisdiction to examine the records, revise the judgment appealed from, increase (or reduce) the penalty, and cite the proper provision of the penal law.<sup>14</sup> The appellate court may, and generally does, look into the entire records to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.<sup>15</sup>

Thus, when petitioners appealed the trial court's judgment of conviction for Less Serious Physical Injuries, they are deemed to have abandoned their right to invoke the prohibition on double jeopardy since it becomes the duty of the appellate court to correct errors as may be found in the assailed judgment. Petitioners could not have been placed twice in jeopardy when the CA set aside the ruling of the RTC by finding them guilty

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<sup>11</sup> *Rollo*, pp. 35-36.

<sup>12</sup> *People of the Philippines v. Reynaldo Torres, et al.*, G.R. No. 189850, September 22, 2014.

<sup>13</sup> *People of the Philippines v. Reynaldo Torres, et al.*, G.R. No. 189850, September 22, 2014.

<sup>14</sup> *Garces v. People*, 554 Phil. 683, 696-697 (2007).

<sup>15</sup> *People v. Dela Rosa*, G.R. No. 201723, June 13, 2013, 698 SCRA 548, 554.

of Violation of Domicile as charged in the Information instead of Less Serious Physical Injuries.

The Court adopts the findings of fact and conclusions of law of the CA. In their testimony before the open court as well as in the pleadings they filed, neither Geroche denied that he was a barangay captain nor Garde and Marfil refuted that they were CAFGU members. In holding such positions, they are considered as public officers/employees.<sup>16</sup>

As to the penalty imposed by the CA, however, We modify the same. Under Article 128 of the RPC, the penalty shall be *prision correccional* in its medium and maximum periods (two [2] years, four [4] months and one [1] day to six [6] years) if Violation of Domicile be committed at nighttime or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender. In this case, petitioners barged in the house of Baleriano while they were sleeping at night and, in addition, they took away with them his airgun.

In imposing a prison sentence for an offense punished by the RPC, the Indeterminate Sentence Law<sup>17</sup> requires courts to impose upon the accused an indeterminate sentence. The maximum term of the prison sentence shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code. Yet the penalty prescribed by Article 128 of the RPC is composed of only two, not three, periods. In which case, Article 65 of the same Code requires the division into three equal portions the time included in the penalty, forming one period of each of the three portions. Applying the provision, the minimum, medium and maximum periods of the penalty prescribed by Article 128 are:

**Minimum** – 2 years, 4 months and 1 day to 3 years, 6 months and 20 days

**Medium** – 3 years, 6 months and 21 days to 4 years, 9 months and 10 days

**Maximum** – 4 years, 9 months and 11 days to 6 years

Thus, applying in this case, the maximum term should be within the medium period or from 3 years, 6 months and 21 days to 4 years, 9 months and 10 days, in light of the provisions of Article 64 of the Revised Penal Code that if there are no other mitigating or aggravating circumstances

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<sup>16</sup> The CAFGU was created pursuant to Executive Order No. 264 for the purpose of complementing the operations of the regular force formations in a locality. It was composed of civilian volunteers who were tasked to maintain peace and order in their localities, as well as to respond to threats to national security. As such, they were provided with weapons, and given the authority to detain or order detention of individuals. (See *People v. Flores*, 410 Phil. 578, 587 [2001]).

<sup>17</sup> Act No. 4103, as amended by Act No. 4225 and Republic Act No. 4203.

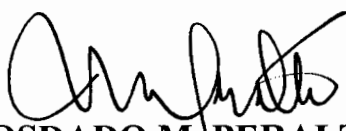
attending the commission of the crime, the penalty shall be imposed in its medium period.

On the other hand, the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC for the crime. The penalty next lower to that prescribed by Article 128 is *arresto mayor* in its maximum period to *prision correccional* in its minimum period (or 4 months and 1 day to 2 years and 4 months).

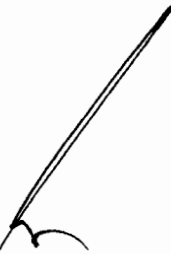
The foregoing considered, in view of the attending circumstances in this case, the Court hereby sentences the petitioners to suffer the indeterminate penalty from two (2) years and four (4) months of *prision correccional*, as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional*, as maximum.


**WHEREFORE**, the Court **AFFIRMS** the Decision dated November 18, 2005 and Resolution dated June 19, 2007 of the Court of Appeals in CA-G.R. CR No. 26418 finding petitioners Edigardo Geroche, Roberto Garde and Generoso Marfil alias "Tapol" guilty beyond reasonable doubt of Violation of Domicile, penalized under Article 128 of the Revised Penal Code, with the **MODIFICATION** that the penalty that should be imposed is an indeterminate sentence from two (2) years and four (4) months of *prision correccional*, as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional*, as maximum.

**SO ORDERED.**

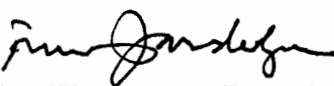
  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson


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

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice


**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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