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FIRST DIVISION

[G.R. No. L-47121. July 30, 1979]

RODOLFO BERMUDEZ, *petitioner, vs.* **HONORABLE COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS (P.D. NO. 9); PURPOSES THEREOF, INTERPRETED.**— Purposes of Presidential Decree No. 9 leave no room for doubt that indeed said Decree is one of those issued by the President to further the ends for which Martial Law was declared, that is, to repel, or at least to prevent the spread of rebellion, insurrection, lawless violence, sedition, criminality, chaos and public disorder. In other words, the *raison d' etre* for P.D. No. 9 is primarily linked with the political purposes for which Proclamation No. 1081 was proclaimed.

2. **ID.; ID.; ESSENTIAL ELEMENT FOR CONVICTION UNDER P.D. NO. 9.**— An element surfaces as essential for conviction under PD No. 9 ("3. It is unlawful to carry outside of residence any bladed, pointed or blunt weapon, such as "fanknife,' 'spear,' 'dagger,' 'bolo,' '*balisong*,' '*barong*,' '*kris*,' or club, except where such articles are being used as necessary tools or implements to earn a livelihood and while used in connection therewith, any person found guilty thereof shall suffer the penalty of imprisonment ranging from five to ten years as a Military Court/ Tribunal/Commission may direct.") — and that is, that the carrying of the prohibited weapon was made in connection with the crime of subversion, rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in Proclamation No. 1081, considering the penalty attached thereto. Absent this essential element as in this case, an acquittal must follow.

3. **ID.; ID.; ID.; ESSENTIAL ELEMENT ABSENT IN CASE AT BAR.**— The record reveals that when state witness Paulino Acena grabbed the bolo from the accused Rodolfo Bermudez on the morning of December 28, 1975 during the *barrio* fiesta, said accused was not, in any way, involved in any unlawful act of

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criminality, and more so, in any act of rebellion, subversion, insurrection, lawless violence, criminality and public disorder. The accused was merely in the act of showing the bolo to Jorge Tuzon (or Rodolfo Tuazon) since the former thought it to be the same bolo owned by the latter.

APPEARANCES OF COUNSEL

Arceli A. Rubin & Reynold S. Fajardo (CLAO) for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

MAKASIAR, *J*:

Rodolfo Bermudez was accused of having violated paragraph 3 of P.D. No. 9, in an information alleging:

"That on or about 10:30 A.M. on the 28th day of December 1975, at Barangay Macarcarmay, Municipality of Bangued, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously possess, carry and have in his custody outside of his residence one (1) sharp pointed bolo measuring 9 3/4 inches long including handle which is violative of said Presidential Decree."

Convicting said accused as charged, the lower court sentenced him to suffer an imprisonment "of from FIVE (5) to TEN (10) YEARS, with costs *de oficio*," and ordered the bolo confiscated in favor of the government.

From this decision, the petitioner appealed to the Court of Appeals.

In the brief filed by petitioner herein before the Court of Appeals (therein defendant-appellant), the following statement of facts was made:

"In the morning of December 28, 1975 during the town fiesta the accused-appellant in group of five namely Cornelio Buenafe, Jorge Tuzon and one were in their way to the basketball court, when suddenly the accused saw a bolo in a sheath. The bolo look similar to the bolo of Jorge Tuzon so he picked and kept it and placed on

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his waistline. When he saw Jorge Tuzon, he draw the bolo with intention to show it to him and inquiring whether it belongs to him but he answered no, so he intended to surrender the same to the *barrio* captain but at that precise moment Paulino Acena grabbed and got hold of the bolo and ran away x x x."

On the other hand, therein plaintiff-appellee (respondent herein) made a counterstatement of facts, which follows:

"On December 28, 1975, Barrio Macarcarmay, Bangued, Abra was celebrating its *barrio* fiesta. At about 10:30 a.m. on the same day, appellant Rodolfo Bermudez was in the company of Cornelio Buenafe and three (3) other persons near the vicinity of the church in the said *barrio*. The appellant was then making trouble and challenging all the people.

"Suddenly, Paulino Acena, who was also in the said vicinity in his capacity as member of the officials of the Barrio Home Defense Unit saw the appellant drawing a bolo and in the act of injuring Jorge Tuzon. So he immediately rushed at the appellant and grabbed the latter 's bolo. When the police authorities arrived about four (4) hours later, he turned over to them the said bolo."

Substantially adopting the foregoing counterstatement of facts by therein plaintiff-appellee, respondent Court of Appeals rendered a decision affirming with modification the decision of the lower court. The dispositive portion of the Court of Appeals decision reads as follows:

"x x x In view of the equities of the case and in the exercise of judicial discretion consonant with the principle that imposition of the absolute minimum penalty prescribed by a special law is not a contravention of the Indeterminate Sentence Law (*People vs. Nang Kay*, 88 Phil. 515) the judgment of the trial court is hereby modified to the end that the appellant be, as he is hereby, sentenced to suffer the straight penalty of five (5) years imprisonment."

The petitioner subsequently filed a motion for reconsideration which was denied.

Hence, the present petition for review on *certiorari*.

Presented for Our consideration are two issues, the discussion of the first of which would suffice for Us to grant the petitioner's plea.

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The first issue raised by the petitioner is whether or not conviction for violation of Presidential Decree No. 9, paragraph 3, requires that the carrying of the prohibited weapons be connected with the crimes of rebellion, subversion, insurrection, lawless violence, chaos, or disorder.

Even a cursory perusal of Presidential Decree No. 9 would reveal that said decree was handed down by the President for some very definitive purposes — which We quote hereunder for ready reference:

"WHEREAS, pursuant to Proclamation No. 1081 dated September 21, 1972, the Philippines has been placed under a state of martial law;

"WHEREAS, pursuant to Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and General Order No. 7 dated September 23, 1972, have been promulgated by me;

"WHEREAS, subversion, rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly weapons;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, in order to attain the desired result of the aforesaid Proclamation No. 1081 and General Orders Nos. 6 and 7, do hereby order and decree that:

xxx xxx xxx

"3. It is unlawful to carry outside of residence any bladed, pointed or blunt weapon, such as 'fanknife,' 'spear,' 'dagger,' 'bolo,' '*balisong*,' '*barong*,' '*kris*,' or club, except where such articles are being used as necessary tools or implements to earn a livelihood and while used in connection therewith, and any person found guilty thereof shall suffer the penalty of imprisonment ranging from five to ten years as a Military Court/Tribunal/Commission may direct."

The foregoing stated purposes of Presidential Decree No. 9 leave no room for doubt that indeed said Decree is one of those issued by the President to further the ends for which Martial Law was declared, that is, to repel, or at least to prevent the spread of rebellion, insurrection, lawless violence, sedition,

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criminality, chaos and public disorder. In other words, the *raison d' etre* for P.D. No. 9 is primarily linked with the political purposes for which Proclamation No. 1081 was proclaimed.

The recent case of *Abril vs. People* (L-46265, Feb. 28, 1978) would serve to enlighten us in this respect. This Court stated thus:

"It can safely be stated here that P.D. 9 was issued by His Excellency, the President of the Republic of the Philippines as an offshoot of Proclamation No. 1081, otherwise known as the Martial Law Proclamation. Said Proclamation No. 1081 was declared by the President in view of the situation then attending in our country. In other words, there was reason of primary national interest which led to the said proclamation. And to add more teeth to the same, the President issued Presidential Decree No. 9 which was to repel rebellion, insurrection and sedition then becoming widespread in this country or to prevent at least the further spread of the same. So that, it can be said and admitted that the issuance of PD 9 was based on Proclamation No. 1081."

In this light, an element surfaces as essential for conviction under PD No. 9 ("3. It is unlawful to carry outside of residence any bladed, pointed or blunt weapon, such as "fanknife,' 'spear,' 'dagger,' 'bolo,' '*balisong*,' '*barong*,' '*kris*,' or club, except where such articles are being used as necessary tools or implements to earn a livelihood and while used in connection therewith, any person found guilty thereof shall suffer the penalty of imprisonment ranging from five to ten years as a Military Court/Tribunal/Commission may direct.") — and that is, that the carrying of the prohibited weapon was made in connection with the crime of subversion, rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in Proclamation No. 1081, considering the penalty attached thereto. Absent this essential element as in this case, an acquittal must follow.

In this case, the record reveals that when state witness Paulino Acena grabbed the bolo from the accused Rodolfo Bermudez on the morning of December 28, 1975 during the *barrio* fiesta, said accused was not, in any way, involved in any unlawful act

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of criminality, and more so, in any act of rebellion, subversion, insurrection, lawless violence, criminality and public disorder. The accused was merely in the act of showing the bolo to Jorge Tuzon (or Rodolfo Tuazon) since the former thought it to be the same bolo owned by the latter. Government witness Paulino Acena was ignorant of these events, which is apparent from his own testimony, to wit:

"Q - On December 28, 1975 do you recall if there was a celebration in Barrio Maqarcarmay, Bangued, Abra?

"A - Yes, there was, sir.

"Q - What was that celebration on December 28, 1975?

"A - It was a *barrio* fiesta, sir.

"Q - During that celebration of the *barrio* at about 10:30 in the morning do you recall if you have seen one Rodolfo Bermudez?

"A - Yes, sir.

"Q - Where did you see him?

"A - Near the vicinity of the chapel, sir.

"Q - What transpired in that place when you saw Rodolfo Bermudez near the vicinity of the chapel?

"A - *I saw Rodolfo Bermudez drawing a knife in front of one person by the name of Rodolfo Tuazon.*

"Q - What did you do as a member of the Home Defense that when you see Rodolfo Bermudez drawing a bolo to Mr. Rodolfo Tuazon?

"A - *Upon my sight I immediately proceeded to him and get the bolo, sir.*

"COURT

"Q - What did you apprehend?

"A - The knife from Rodolfo Bermudez, your Honor.

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"FISCAL PAREDES

"Q - At the very moment you confiscated the bolo what was Rodolfo Bermudez doing with the bolo?

"ATTY. GENEROSA

"It was already answered.

"FISCAL PAREDES

"We are asking the moment he grabbed the bolo, your Honor.

"COURT

"Answer the question.

"WITNESS

'A - When I approached the knife was half-drawn from the scabbard, sir.

"ATTY. PAREDES

"Were you able to get that bolo?

'A - Yes, sir.

"Q - At the time you saw the accused in possession of that bolo how many meters?

"A - About 25 yards, sir.

"Q - *On that date, time and day I presumed there were plenty of people in your barrio?*

"A - *Yes, sir.*

"Q - *As a matter of fact these people were near the vicinity where the accused was allegedly see him have the bolo?*

"A - *They were many of them saw (sic), sir.*

"Q - *And the 5 persons were also there near the vicinity?*

"A - *They were, sir.*

"Q - When you first saw the accused with the bolo he was already holding the same in his hands?

"A - No, sir.

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"Q - How then were you able to see the bolo in the possession of the accused?

"A - *I only see the bolo when he was drawing the bolo to Rodolfo Tuazon, sir.*

"Q - *Removing the bolo in his scabbard?*

"A - *Yes, sir.*

"Q - *One hand the scabbard and the other hand holding the bolo?*

"A - *Yes, sir.*

"Q - *He was showing the bolo to Rodolfo Tuazon?*

"A - *That is what I do not know, sir.*

"Q - When you saw the accused doing that thing to the bolo you immediately apprehend him and get hold of the bolo?

"A - Yes, sir.

"Q - You see that from a distance of 25 yards?

"A - Yes, sir.

"Q - *And when you grabbed the bolo from him as your son-in-law he voluntarily gave the bolo to you?*

"A - *Yes, sir*" (pp. 14-16, rec.; italics supplied).

The foregoing testimony belies the finding of the respondent Court that before Acena rushed at the accused, the former suddenly saw the latter in the act of drawing a bolo and injuring Jorge Tuzon. In his testimony, Acena denied knowledge of the accused's intention in drawing the bolo from its scabbard. He did not know whether the accused was merely showing the bolo to Tuzon (or Tuazon). He just saw from a distance of 25 yards the accused drawing the bolo in front of Tuzon (or Tuazon). If the accused wanted to assault Tuzon (or Tuazon), he could have done so before Acena could reach him from 25 yards away. The accused's statement, therefore, that he picked up the bolo to show it to Rodolfo (or Jorge) Tuzon is more tenable, corroborated as it is by the testimony of Jorge Tuzon (or Rodolfo Tuazon) who declared that the accused merely asked him whether the bolo found by the accused belongs to him (Tuzon or Tuazon) [t.s.n., pp. 63-64, hearing of June 28, 1976].

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Hence, accused's testimony that he found the bolo at the middle of the barrio road at about 10:30 in the morning of December 28, 1975, becomes credible.

In his affidavit taken on December 29, 1975 by policeman Catalino Buenafe of Bangued, Abra, principal state witness Paulino Acena *y* Bautista stated that he is a retired PC soldier residing at Barangay Macarcarmay, Bangued, Abra; that about 11:30 in the morning of December 28, 1975, while the *barrio* people were in the *barrio* church, he saw the accused Rodolfo Bermudez (husband of his daughter) holding a bolo facing somebody else; that he went near them and confiscated the bolo from his son-in-law, the accused herein, whom he pulled away from the crowd and advised to keep quiet; that when the accused did not heed his advice, he let him go; that he did not return the bolo because as a retired soldier, he knows that the accused has violated the law; that because he did not return the bolo to the accused, the latter threatened him by saying "there will be a time for you" and thereafter went away; that soon after Patrolman Eduardo Bringas arrived; that he handed to Patrolman Bringas the bolo he confiscated from the accused; that Nicanor Valera and many other persons were present when the incident happened; that Cornelio Buenafe was the companion of the accused who was creating trouble and challenging all the people who panicked; that the bolo he confiscated from the accused was sharp-pointed about 9-3/4 inches long, including its handle and wooden scabbard; that he did not know the person whom the accused was "charging on" when he was holding the bolo; that the accused was then facing Rudy Tuzon (referring to George Tuzon) and many others whom he can no longer remember; and that nobody was wounded during the incident (Exh. C, Translation, p. 2, rec.).

In his testimony in court, state witness Paulino Acena declared at the hearing on June 21, 1976 that he is a member of the Civilian Home Defense Unit of the *barrio* and a retired PC soldier; that on December 28, 1975, they were celebrating the fiesta of Barrio Macarcarmay, Bangued, Abra; that at about 10:30 in the morning of said date, December 28, 1975, he saw

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about 25 yards away the accused Rodolfo Bermudez about two meters from the *barrio* chapel drawing a knife in front of Rodolfo Tuzon (obviously referring to George Tuzon, nicknamed Rudy) in the company of five other persons including Cornelio Buenafe; that he immediately proceeded to the accused from whom he confiscated the bolo; that when he approached the accused the bolo was already half-drawn from its scabbard (Exhibits A & A-1); that he does not know why the accused drew the bolo half-way; that after seizing the bolo from the accused, he counselled him after which the police force arrived; that he gave the bolo to policeman Felipe Bello; that the accused is from Tayum, Abra and resides about 500 yards from the chapel of Barrio Macarcarmay, Bangued, Abra; that he does not know that the accused herein, his son-in-law, is a friend of Rodolfo Tuzon (referring to George Tuzon); that there were many people in the vicinity of the incident; that he did not know whether the accused then was showing the bolo to him; that he did not inquire as to who owned the bolo, but that after the crowd dispersed, he asked the accused who answered that the bolo is his; that Cornelio Buenafe was still with the accused after he confiscated the bolo from the latter, but Cornelio Buenafe also left when the crowd dispersed, although Cornelio Buenafe accompanied the accused to his (Acena's) house to talk with him about the incident; that after getting the bolo from the accused, he immediately left the area because the accused and his companions were challenging him to a fight; that only the accused followed him to his house to get the bolo from him to be used in killing a pig, that after two hours the accused went to his (Acena's) house asking for the bolo; that he told the accused that he will keep the bolo until everything is over; that he kept the bolo for about three hours inside his dresser until the arrival of the police force to whom he surrendered the bolo; that the companions of the accused challenged him to a fight because he refused to return the bolo; and that Tuzon did not run away although he did not see him in the place of the incident after he got the bolo from the accused.

When he was recalled to the witness stand, state witness Acena further stated that as a member of the Civilian Home

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Defense Force and as a citizen, he was authorized to arrest any person who commits a crime in his presence; and that he reported the incident to the *barrio* captain and the PC Commander, but he did not state whether he investigated the incident or the circumstances giving rise thereto.

Policeman Felipe Bello testified that he was at the municipal building of Bangued, Abra when a certain Mrs. Brilliantes, the head teacher of Macarcarmay Elementary School, reported to him the trouble that took place in Barrio Macarcarmay in the morning of December 28, 1975; that together with patrolmen Eduardo Bringas and Manuel Marilag, he proceeded on a jeep to and reached said *barrio* about 12 o'clock noon; that he went to the house of Paulino Acena who surrendered the bolo to him telling him that he (Acena) confiscated the bolo from the accused Rodolfo Bermudez; that he issued to Acena a receipt for the bolo; that upon his query, Acena told him that he did not know where the accused had run away; and that they looked vainly for the accused in the vicinity of the incident.

In his defense, the accused presented his testimony and those of Romeo Buenafe, Jorge Tuzon, and Cornelio Buenafe.

The accused Rodolfo Bermudez testified on July 16, 1976 that he was 24 years old (now 26), married and a farmer and resident of Barrio Velasco, Tayug, Abra; that in the morning of December 28, 1975, he was walking on the road going towards the basketball court of Barrio Macarcarmay, Bangued, Abra, together with Cornelio Buenafe, Rodolfo Buenafe and two others; that he went to the house of Cornelio Buenafe before proceeding to the basketball court; that on the way, he saw a bolo which he picked up, despite the advice of Cornelio Buenafe not to pick it up as it might work against him later on; that he picked up the bolo because it appeared similar to the bolo of Jorge (or George) Tuzon, one of his defense witnesses and his good friend; that he saw Jorge Tuzon near the church that morning; that he placed the bolo on his waistline; that when he saw Jorge Tuzon at the basketball court he showed the bolo to him and asked him whether it was his and Jorge Tuzon replied that it was not his, he told Tuzon that he had to surrender the same or to any

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member of the *barrio* council; that the basketball court is about 80 to 100 meters from where he first saw him (Jorge) near the church; that when he showed the bolo to Tuzon, Cornelio and Rodolfo Buenafe were with him; that after he showed the bolo to Tuzon, he was about to deliver the bolo to Romeo Buenafe, *barrio* councilman of Barrio Macarcarmay who was approaching them when his father-in-law Paulino Acena, state witness, came from behind him and took the bolo from him; that after Paulino Acena grabbed the bolo from him, Jorge Tuzon and some people nearby ran away leaving only Cornelio Buenafe with them; that after grabbing the bolo from him Paulino Acena pointed a gun at him asking him who owns the bolo, adding "shet"; that thereafter Paulino Acena left together with his wife (the accused's mother-in-law); that after Paulino Acena left, barrio councilman Romeo Buenafe asked him why Paulino Acena grabbed the bolo in his (Romeo Buenafe's) presence; that councilman Romeo Buenafe told him that they will get the bolo to butcher chickens and a pig and that he will deliver the bolo to him (the accused) for him to turn over the same to the *barrio* captain; that thereafter he and Cornelio Buenafe proceeded to the house of Paulino Acena to get the bolo; that when they tried to get the bolo from Paulino Acena, an altercation ensued between Paulino Acena and Cornelio Buenafe in the yard of Paulino Acena fronting the road; that during the altercation between Paulino Acena and Cornelio Buenafe there were plenty of people passing along the road because it was then a *barrio* fiesta; that the passersby stopped and listened to the verbal exchange between Paulino Acena and Cornelio Buenafe and ran away when Paulino Acena tried to rush at him and Cornelio Buenafe; that his wife Aurelia Acena is the daughter of Paulino Acena; that during the altercation between Paulino Acena and Cornelio Buenafe, he just listened and did not utter any word because he did not have the temerity to answer his father-in-law Paulino Acena; that when Paulino Acena got the bolo from him while in front of the *barrio* chapel, he did not make any protest because he considered Paulino Acena as his own father; that he was not even able to tell Paulino Acena that he was surrendering the bolo to *barrio* councilman Romeo Buenafe because Paulino

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Acena just grabbed the bolo from him; that the place where he picked up the bolo was about 30 to 35 meters from the place where he showed the bolo to Jorge Tuzon; that they went direct to him from the place where he picked up the bolo; that he was wearing a shirt then as he was going to play basketball; that Paulino Acena smelt of liquor when he (Acena) grabbed the bolo from him; that Paulino Acena filed the complaint of illegal possession of deadly weapon and the charge of public scandal against him because Paulino Acena did not like him to marry his daughter, possibly because of his poverty; that he paid a fine for public scandal because he wanted the case to be terminated as he was ashamed of a case existing between him and his father-in-law; that he was not able to tell his father-in-law that he just picked up the bolo because his father-in-law appeared suddenly and took the bolo away from him and soon after his mother-in-law took him (Acena) away and brought him to their house; that thereafter he was not able to tell his father-in-law that he just picked up the bolo on the road because he was afraid to go to their house as he was informed that his father-in-law would kill him; that he was never investigated by the authorities because of the incident; that he learned of this case only when he was arrested on February 27, 1976; that the bolo Exhibit "A" together with its scabbard, Exhibit "A-1", is not the same as the bolo he picked up because the bolo he picked up was smaller than Exhibit "A" and that the scabbard is made of leather unlike Exhibit "A-1" which is made of wood; that he did not have any intention to own the bolo which he picked up; that he was the only one who picked up the bolo despite the many people walking along the same road where he found it; that he tucked the bolo in his waistline but still visible; that he did not have any intention to stab Jorge Tuzon with the bolo; that when he brought out the bolo the people near Jorge Tuzon did not run; that he was not able to tell his father-in-law Paulino Acena that he picked up the bolo after Acena grabbed it from him because Acena pointed a gun at him — a .22 caliber magnum; that he reported the fact that Paulino Acena pointed a gun at him to the persons in the cadre who told him to settle the case between themselves since Paulino

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Acena is his father-in-law and they belong to the same family and that when the case will not be settled between him and his father-in-law, they advised him to return to the cadre so that they will help him settle the case; that his statement was taken down in writing; that he has no copy of his statement or report; that he did not insist in filing a case against his father-in-law Paulino Acena because he considers him as his own father, being the father of his wife; that while the other persons in the vicinity may not have seen his father-in-law pointing a gun at him because they ran away after Paulino Acena grabbed the bolo from him, Cornelio Buenafe did see; that three days after the incident, he told barrio captain Emilio Bigornia that he just picked up the bolo which was grabbed by Paulino Acena, when he and Barrio Captain Bigornia talked by chance near their place because the *barrio* captain learned of the incident but he did not purposely go to the barrio captain to report the matter to him; that he and Cornelio Buenafe were sent to the house of Paulino Acena to get the bolo from him because it will be used in butchering a pig, not of their own volition but because Romeo Buenafe sent them for said purpose; that the altercation between Paulino Acena and Cornelio Buenafe was due to the fact that Paulino Acena uttered many words which provoked Cornelio Buenafe to answer back; that when he was showing the bolo to Jorge Tuzon before Paulino Acena grabbed it from him Councilman Romeo Buenafe was about six meters away; that the *barrio* captain did not like to accompany him to his father-in-law to tell him that he just picked up the bolo; that people told him that his father-in-law will kill him if he goes to him; and that his own wife told him that his father-in-law did not like any person to be presented to him.

Defense witness Cornelio Buenafe testified on August 2, 1976 that he was then 28 years old, single, laborer and resident of Barrio Macarcarmay, Bangued, Abra; that in the morning of December 28, 1975, his four friends including the accused Rodolfo Bermudez fetched him from his house and they proceeded to the basketball court to play basketball near the *barrio* school; that on the way to the basketball court they saw a bolo on the road which the accused picked up, in spite of his warning not

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to do so because the bolo might work against him; that the accused replied that the bolo appeared to be similar to the bolo of Jorge Tuzon; that as they continued walking towards the basketball court, the accused was looking for Jorge Tuzon who was about five meters away and whom he believed to be the owner of the bolo, when Paulino Acena grabbed the bolo from the accused while they were about 75 meters from the chapel with only a few persons near them; that when Paulino Acena grabbed the bolo from the accused causing the people around to scamper, Jorge Tuzon said that it was not his bolo; that Councilman Buenafe told the accused to get the bolo and surrender it to him; that the place where the accused picked up the bolo is about 150 to 170 meters from the place near the church where Paulino Acena grabbed the bolo from the accused; that soon after Paulino Acena grabbed the bolo from the accused, the wife of Paulino Acena took him home; that obeying the orders of Barrio Councilman Romeo Buenafe, he and Rodolfo Bermudez went to the house of Paulino Acena to get the bolo to be used in butchering a pig; that there were many people passing by when he was trying to get the bolo from Paulino Acena; that the passers-by gathered around and listened to the exchange of words between him and Paulino Acena; that, thinking that they were quarreling, the passers-by ran away; that the accused Rodolfo Bermudez left when he (Buenafe) was trying to get the bolo from Paulino Acena; that he also left after the passers-by ran away; that the bolo marked Exhibit "A" is not the bolo which was picked up by the accused because the bolo the accused picked up was shorter and had a leather scabbard; that the *barrio* road was about three meters wide; that the accused showed the bolo to the people in the vicinity to find out who owns it; that when Paulino Acena from behind, grabbed the bolo from the accused, a scandal was created by him and the accused, to which charge they both pleaded guilty and paid a fine because they did not like any trouble; that the scandal might have occurred at the time he and the accused went to the house of Acena to get the bolo upon instruction of Barrio Councilman Romeo Buenafe which gave rise to an altercation between him and Paulino Acena; that the altercation

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was due to the fact that Paulino Acena did not like to give the bolo which they wanted to use for butchering a pig; that during the latter part of his altercation with Paulino Acena, the accused left; that after butchering the pig with the bolo they would surrender the bolo to Barrio Councilman Romeo Buenafe, who told them to surrender the same to him after butchering a pig; that at the time the accused picked up the bolo lying on the road, he said that the bolo is similar to the bolo of Jorge Tuzon, after he advised the accused not to pick it up or it might later involve him; that when they saw Jorge Tuzon two meters away, Barrio Councilman Romeo Buenafe was about five meters from them; and that he was about three meters behind the accused and Jorge Tuzon when the accused showed the bolo to Tuzon.

Defense witness Romeo Buenafe declared that he was 32 years old (on June 28, 1976), married, farmer, *barrio* councilman of Barrio Macarcarmay, and member of Civilian Home Defense Force (CHDF) and resident of said *barrio*; that about 10:35 in the morning of December 28, 1975, he was near the *barrio* church with his companions waiting for the mass to start; that the accused Rodolfo Bermudez showed a bolo to Jorge Tuzon; that being a *barrio* councilman, he thought it was his duty to take the bolo but that was the time when Paulino Acena, the father-in-law of the accused arrived: that he was informed that the accused found a bolo on the *barrio* road: that the accused was about to give him the bolo when Paulino Acena grabbed it: that the accused had five other companions; that the accused obeyed him when he told him to go with his father-in-law; that he was not able to do anything because the bolo was already taken by Paulino Acena but he was able to tell the accused why his father-in-law did that to him that the accused and his father-in-law are not in good terms because his father-in-law does not like the accused; that the accused is not notorious and has been conducting himself properly; that it was only in the morning of the trial that day when the accused requested him to testify in his defense; that the wife of the accused is his niece by a second degree cousin; that the head teacher of the *barrio* elementary school reported to the municipal building the trouble of a commotion caused by the possession of the

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bolo; that the accused and Cornelio Buenafe did not create the trouble; that he does not know that the accused and Cornelio Buenafe were charged with public scandal in the municipal court, that the accused took the bolo from his waist because he was looking for its owner; that he came to testify to tell the truth; that the people thought that there was trouble when the accused showed the bolo to Jorge Tuzon although actually there was no trouble that he is not sure whether Exhibits "A" and "A-1" are the same bolo and its scabbard; that he had no chance to hold the bolo; that he was about five meters from the accused when the latter drew the bolo from his waist; and that he wanted to approach the accused because he was looking for the owner of the bolo but that before he could reach him, the father-in-law of the accused grabbed the bolo from behind.

Jorge (George) Tuzon testified that he is 23 years old (on June 28, 1976), married, farmer and resident of Barrio Macarcarmay, Bangued, Abra; that he knows the accused when he married the daughter of Paulino Acena, a resident of the *barrio*, and thereafter they became friends that about 10 o'clock in the morning of December 28, 1975, he was sitting near the chapel with his "*barkada*" and listening to *barrio* councilman Romeo Buenafe conversing with other people; that there were many persons then because it was a *barrio* fiesta; that the accused, with Cornelio Buenafe and other friends, came to their place asking who was the owner of the bolo which he drew from his waist; that when the accused told them that he was going to surrender the bolo to the *barrio* councilman, his father-in-law Paulino Acena from behind grabbed the bolo from him; that after grabbing the bolo Paulino Acena left; that he does not know of any quarrel between the accused and his father-in-law then; that when Paulino Acena grabbed the bolo from the accused, he and the others ran away because they were afraid; that he does not know whether there was any trouble created by the accused and Cornelio Buenafe because he was no longer in the vicinity after Acena seized the bolo from the accused; that Exhibits "A" and "A-1" are not similar to the bolo and the scabbard grabbed by Acena from the accused

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because the scabbard found by the accused was made of leather; that he was about one meter from the accused when the latter showed him the bolo and asked him whether the bolo was his; that he was there to tell the story he had just related; that when he told the accused that it was not his bolo, the accused said that they will have to surrender the same to the authorities.

On rebuttal, state witness Paulino Acena denied that he pointed a gun at the accused after grabbing the bolo from him; reiterated his identification of Exhibits "A" and "A-1" as the bolo and scabbard that he grabbed from the accused; stated that he thought he saw Cornelio Buenafe when he grabbed the bolo from the accused; denied that the accused and Cornelio Buenafe went to his house to get the bolo to be used in butchering a pig nor was there an altercation between him and Cornelio Buenafe; that he had a magnum gun which he carried with him during the fiesta to maintain peace and order; that he kept the bolo he seized from the accused in his house until the arrival of the police to whom he surrendered the same that very day; that he kept the bolo in the drawer of his dresser; that after he seized the bolo from the accused, the latter went to his house to get the bolo; and that he advised the accused as a son that he should not get the bolo.

Under the established facts, We cannot conclude that petitioner was engaged in subversion, insurrection, rebellion, criminality, public disorder, or lawless violence. His plea of guilty to the charge of public scandal for which he was accordingly sentenced to pay a fine, does not necessarily give rise to the inference that he was then a participant in subversive activities, or lawless violence or criminality or public disorder. A rebel, dissident, or criminal would not carry openly such a deadly weapon in front of many people in broad daylight (about 10:30 in the morning) during a *barrio* fiesta near the *barrio* chapel beside which a program for children had just ended. If the bolo were his (as intimated by witness Nicanor Valera, pp. 3-4, 7, rec.), petitioner could be carrying it as his usual farm or household tool or implement. If it was not his, then his story that he found the bolo and that he was showing it to his companion Jorge Tuzon

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(or Rodolfo Tuazon) when his father-in-law Paulino Acena saw him and grabbed it from him thinking that petitioner was about to injure Jorge Tuzon (or Rodolfo Tuazon) with it, appears credible.

Likewise, the testimony of the accused, a retired army soldier (Exh. "C", p. 2, rec.), that his father-in-law made up the case against him, because his father-in-law, Paulino Acena — also a retired PC (Exh. "C", p. 2, rec.), did not like him as a husband for his daughter, cannot be entirely ignored.

In view of Our findings of fact as aforestated, there is no need to discuss the second issue of double jeopardy raised by petitioner.

It should be stressed that the petitioner herein was first charged with public scandal for the same incident and paid the corresponding fine immediately.

WHEREFORE, THE DECISION RENDERED BY THE COURT OF APPEALS ON JULY 29, 1977, AFFIRMING THAT OF THE LOWER COURT WHICH FOUND THE ACCUSED GUILTY OF VIOLATION OF PD NO. 9[3], MUST BE, AS IT IS HEREBY, SET ASIDE AND REVERSED; THE ACCUSED IS HEREBY ACQUITTED OF SAID CHARGE. NO COSTS.

Teehankee (Chairman), Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.