

101 Phil. 179

[G. R. No. L-8293. April 24, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SALVADOR LUBO AND RAMON DOROMAL, DEFENDANTS; SALVADOR LUBO, DEFENDANT AND APPELLANT.

D E C I S I O N

PADILLA, J.:

Salvador Lubo appeals from a judgment of the Court of First Instance of Iloilo finding him guilty of violation of section 2692 of the Revised Administrative Code, as amended by Republic Act No. 4 (illegal possession of firearms), sentencing him to suffer an indeterminate penalty of not less than five years nor more than seven years, the accessories of the law, and to pay one-half of the costs, and ordering the forfeiture of the firearm and ammunition (crim. case No. 3588). Ramon Doromal, his co-defendant, was acquitted for insufficiency of evidence. In this appeal only questions of law are raised, to wit—

1. The trial court erred in not giving due weight to the provisional permit issued by the mayor of Dumangas, authorizing the appellant herein to hold and possess the firearm and ammunition in question as evidenced by Exhibit 2;
2. The trial court erred in not finding that the element of *animus possidendi* has not attached to the act complained of; and
3. The trial court erred in imposing upon the appellant herein a penalty which is altogether out of proportion, considering the nature of the present case, without recommendation of executive clemency to the President of the Philippines in accordance with Article 5 of the Revised Penal Code and the ruling laid down by this Honorable Court in the case of *People vs. Estoista*, 93 Phil., 647).

The trial court found that—

En la noche del 29 de Septiembre de 1952, uno llamado Filomeno Divinagracia recibio un balazo de una carabina disparado por Salvador Lubo. uno de los acusados en esta causa. El disparo tuvo lugar en el corral de pesca de la propiedad del otro acusado, Ramon Doromal, enclavado en el barrio de Bolilao, Dumangas, Iloilo. El primero' era el encargado del ultimo en el mencionado corral de pesca. Al dia siguiente, el acusado Salvador Lubo se presento a las autoridades locales de Dumangas, Iloilo, entregandolcs al propio tiempo la carabina con que disparo contra Filomeno Divinagracia y trcce balas (Exhibitos A y B). Despues de practicada la investi-gacion correspondiente, se deseubrio que el acusado Salvador Lubo estuvo en posesion de la carabina y 15 balas desde el 15 de Enero de 1948, -oor no decir antes, hasta el 30 de Septiembre de 1952, asi es que el Jefe de Policia incoo esta causa contra los dos acusados por posesion ilegal de armas de fuego y balas.

Estos son los hechos concluyentemente probados en esta causa.

El acusado Salvador Lubo, declarando como testigo a su favor, dijo que, a principios de Enero de 1948, el recibio instrocciones de su co-acusado Ramon Doromal para limpiar la bareaza (landing barge) comprada por este en los liltimos dias de Diciembre de 1947; que mientras limpiada dicna embarcacion, cl encontro en uno de los compartimientos de la misma una carabina eon quince balas, ahora mareadas como Exhibitos A y B; que inmediatec dio cuenta del ballazgo de la carabina y balas a su amo, su ahora co-acusado Ramon Doromal, quien le instruyo que las Uevara para ser presentadas al alcalde de Dumangas, Iloilo; que eon la earabina y las balas, los dos acusados sc fueron al alcalde de Dumagas, Simplicio A. Pcndon, quien, teniendo en cuenta la precaria situation sobre la paz y orden, expidio un permiso provisional a nombre del acusado Ramon Doromal para poseer dichas carabina y balas; que no obstante el permiso provisional expedido a nombre del acusado Ramon Doromal, su co-acusado Salvador Lubo volvio al corral de. pesca con la carabina y las 15 balas; que en vista de que el acusado Salvador Lubo era el que estaba en posesion de las mismas, el acusado Ramon Doromal llamo dc nuevo a su co-acusado Salvador Lubo para que el permiso provisional para poseer dichas earabina y balas se expi-diera a su nombre, como asi se hizo; que tal permiso provisional expedido a nombre del acusado Salvador Lubo esta fechado el 15 de Enero dc 194S (Exhibito 2).

The permit to possess the firearm and ammunition in question, issued by the municipal mayor of Dumangas, Iloilo, in favor of the appellant (Exhibit 2) is invalid. A municipal mayor is not authorized by law to issue license to possess firearms or temporary license to persons surrendering them. It is the President of the Philippines, upon proper application and posting of the necessary cash deposit or bond, who is authorized by law to issue license to possess firearms to persons desiring to possess them for personal protection,¹ and the Provost Marshal General or the provincial provost marshal, as the case may be, who is authorized by law to issue temporary license to possess firearms to persons surrendering them for periods not exceeding three months at a time.² Moreover, the provisions of section 2, Eepublic Act No. 4, were repealed by section 1, Republic Act No. 486, approved on 11 June 1950, and all temporary licenses for firearms issued under section 2 of Republic Act No. 4 were cancelled.” Section 3, Eepublic Act No. 486, further provides that—

* * * persons (other than members of municipal and special or temporary police forces) shall be allowed to retain their firearms, by converting their temporary-licenses into- regular-licenses if they possess the qualifications prescribed by existing laws and regulations and upon security of the reglementary bond. Pending the issuance of the regular license applied for, a provisional permit may be granted.

The appellant failed to show that he has a regular license or a provisional permit pending the issuance of the regular’ license applied for, to possess the firearm and ammunition in question issued by the competent authorities. Furthermore, temporary license⁴ issued by the Provost Marshal General or the provincial provost marshal, as the case may be ⁵ are effective only for periods not exceeding three months at a time. The permit to possess the firearm and ammunition in question (Exhibit 2) was issued on 15 January 1948 and has never been renewed. The crime charged is punished by special law,⁶ a *malum prohibitum*, and no malice or intent to commit a crime need be proved. The plea of lack of *animus possidendi* is untenable. While it is true that there must be possession coupled with intent to possess the firearm to support conviction, appellant’s conduct belies his contention. The very fact of possession and use by the appellant and his securing a “temporary license” show beyond doubt that the *animus possidendi* exists.

In *People vs. Estoista*, 93 Phil., 647, 49 Off. Gaz. 3330, this Court held—

* " * that confinement from 5 to 10 years for possessing or carrying firearms is not cruel or unusual, having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify imprisonment which in normal circumstances might appear excessive. If imprisonment from 5 to 10 years is out- of proportion to the present case in view of certain circumstances, the law is not to be declared unconstitutional-for this, reason. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases. Small transgressors for which the heavy net was not spread are, like small fishes, bound to be caught, and it is to meet such a situation as this that Courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty. (Article 5, Revised Penal Code; *People vs. De la Cruz*, 92 Phil., 808.) See also *People vs. Melgar* 100 Phil., 298, 52 Off. Gaz. 7238.

The failure of the trial court to recommend to the Chief Executive that clemency be granted to the appellant or that the penalty imposed upon him be reduced does not warrant the acquittal of the appellant.

Taking into consideration, however, the fact that upon finding the firearm and ammunition in question the appellant reported the discovery to his employer and upon the latter's advice surrendered them to the municipal mayor, who in turn issued a permit to possess them while "in lawful defense of the fishpond property" of his employer; that in firing at Filomeno Divinagracia on the night of 29 September 1952, inside the fishpond he was guarding, he was presumably acting in defense of his employer's property; and that the following day he voluntarily surrendered the firearm and ammunition in question to the municipal authorities, in line with the recommendation of this Court in the cases of *People vs. Estoista, supra*, and *People vs. Melgar, supra*, it is ordered that a copy of this judgment be forwarded to the President, through the Secretary of Justice, with the recommendation that the penalty imposed upon the appellant be reduced to one year.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

¹ Section 888, in connection with section 887, Revised Administrative Code.

² Proclamation No. 1, series of 1946, 42 Off. Gaz. 1418-1420, issued pursuant to section 2, Republic Act No. 4.

³ Section 2, Republic Act No. 486.

⁴ Ibid.

⁵ Proclamation No. 1, series of 1946, supra.

⁶ U. S. vs. Go Chico, 14 Phil. 128; People vs. Eayona, 61 Phil. 181; People vs. Cava, G. R. No. L-9416, 81 August 1956.

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