

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALBERTO ESTOISTA, DEFENDANT AND APPELLANT.

G.R. No. L-5793. August 27, 1953

Ponente: TUASON, J.

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TUASON, J.:

Prosecuted in the Court of First Instance of Lanao for homicide through reckless imprudence and illegal possession of firearm under one information, the appellant was acquitted of the first offense and found guilty of the second, for which he was sentenced to one year imprisonment. This appeal is from that sentence raising factual, legal and constitutional questions. The constitutional question, set up after the submission of the briefs, has to do with the objection that the penalty—from 5 to 10 years of imprisonment and fines—provided by Republic Act No. 4 is cruel and unusual.

As to the facts. The firearm with which the appellant was charged with having in his possession was a rifle and belonged to his father, Bruno Estoista, who held a legal permit for it. Father and son lived in the same house, a little distance from a 27-hectare estate belonging to the family which was partly covered with cogon grass, tall weeds and second growth trees. From a spot in the plantation 100 to 120 meters from the house, the defendant took a shot at a wild rooster and hit Diragon Dima, a laborer of the family who was setting a trap for wild chickens and whose presence was not perceived by the accused.

The evidence is somewhat conflicting on whether the owner of the rifle was with the accused at the time of the accidental killing.

Bruno Estoista testified that on the morning of the accident, February 10, 1949, his son told him that there were wild chickens on the plantation "scratching palay and corn" plants and asked if he might shoot them; that Bruno told his son to wait, got the rifle from the house or locker, handed it over to Alberto who is a "sharp shooter" and "shoots better," and walked about 20 meters behind the young man; that Bruno was that far from Alberto when the latter fired and accidentally wounded their servant.

The defendants key testimony is: "When I heard wild rooster crowing I told my father about the said wild rooster crowing near our house and he told me to shoot the said wild rooster, so I went to shoot it."

Bruno's testimony at the trial is in direct contradiction to his and his son's statements at the Constabulary headquarters on the same morning of the shooting, and sworn to by them before the justice of the peace soon after.

Bruno related on that occasion that Alberto "went to hunt for wild roosters;" that "later on my son Alberto came to inform me that he had accidentally hit our laborer," that thereupon he "went with my son to see what happened." Queried "who was with Alberto when he went out hunting," Bruno replied, "He was alone."

On his part, the defendant declared on the same occasion that Diragon Dima, after being shot, requested to be taken to his (Dima's) house; that as the accused was able to carry the wounded man only about 50 meters, Dima

asked the defendant to call Bruno "who was in the house"—which Alberto did. To the question who his companion was when he shot at a rooster, Alberto said, "I was alone."

There is not the slightest ground to believe that these affidavits contained anything but the truth, especially that part regarding Bruno's whereabouts when the defendant used the rifle. Both affiants are very intelligent, the affidavits were executed immediately upon their arrival at the Constabulary headquarters, there is no hint of any undue pressure brought to bear upon either of them, and, above all, they stood to gain nothing from the statement that the accused was unaccompanied. In contrast, Bruno's testimony in court was interested, given with his son's acquittal in view. And especially is the father's veracity in court to be distrusted because by Alberto's unsolicited admission, he had been in the habit of going out hunting in other places and for target practices, and because Bruno's unwitting admission, his son, who had no gun of his own, is a sharpshooter and shoots better,

It being established that the defendant was alone when he walked to the plantation with his father's gun, the next question that presents itself is: Does this evidence support conviction as a matter of law?

In *United States vs. Samson*, (16 Phil. 323), cited by defense counsel, it was held that carrying a gun by order of the owner does not constitute illegal possession of firearm. The facts in that case were that a shotgun and nine cartridges which belonged to one Pablo Padilla, who had a proper permit to possess them, were seized by the police from Samson while walking in the town of Santa Rosa, Nueva Ecija. Padilla was to use the shotgun in hunting that day and, as he was coming along on horseback, sent Samson on ahead.

Republic Act No. 4, amending section 2692 of the Revised Administrative Code, in its pertinent provision is directed against any person who possesses any firearm, ammunition therefor, etc. A point to consider in this connection is the meaning of the word "possesses."

It goes without saying that this word was employed in its broad sense so as to include "carries" and "holds." This has to be so if the manifest intent of the Act is to be effective. The same evils, the same perils to public security, which the Act penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatever. "Ownership of the weapon is necessary only insofar as the ownership may tend to establish the guilt or intention of the accused." It is remarkable that in the United States, where the right to bear arms for defense is ensured by the federal and many state constitutions, legislation has been very generally enacted severely restricting the carrying of deadly weapons, and the power of state legislatures to do so has been upheld.

In the light of these considerations, it is a mistake to point to *United States vs. Samson*, supra, as authority for the appellant's plea for acquittal. The implied holding in that case that the intention to possess is an essential element of a violation of the Firearms Law was not intended to imply title or right to the weapon to the exclusion of everyone else. The court did not mean only intention to own but also intention to use. From the very nature of the subject matter of the prohibition control or dominion of the use of the weapon by the holder regardless of ownership is, of necessity, the essential factor.

The terms "control" and "dominion" themselves are relative terms not susceptible of exact definition, and opinions on the degree and character of control or dominion sufficient to constitute a violation vary. The rule laid down by United States courts—rule which we here adopt—is that temporary, incidental, casual or harmless possession or control of a firearm is not a violation of a statute prohibiting the possessing or carrying such of this kind of weapon. A typical example of such possession is where "a person picks up a weapon or hands it to another to examine or hold for a moment, or to shoot at some object." (*Sanderson vs. State*, 5 S.W. 138; 68 C.J. 22.)

Appellant's case does not meet the above test. His holding or carrying of his father's gun was not incidental,

casual, temporary or harmless. Away from his father's sight and control, he carried the gun for the only purpose of using it, as in fact he did, with fatal consequences.

Incidentally, herein lies a fundamental difference between the case at bar and the Samson case. Although Samson had physical control of his employer's shotgun and cartridges, his possession thereof was undoubtedly harmless and innocent, as evidenced by the fact that, apparently, he bore them in full view of the people he met and of the authorities. Unlike the appellant herein, Samson carried the gun solely in obedience to its owner's order or request without any inferable intention to use it as a weapon. It is of interest to note that even in the United States where, as stated, the right to bear arms as a means of defense is guaranteed, possession such as that by Samson is by the weight of authority considered a violation of similar statutes.

Without deciding whether the prohibition of the Constitution against infliction of cruel and unusual punishment applies both to the form of the penalty and the duration of imprisonment, it is our opinion that confinement from 5 to 10 years for possessing or carrying firearm 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. (Art. 5, Revised Penal Code; *People vs. De la Cruz*, 92 Phil. 906.)

The sentence imposed by the lower court is much below the penalty authorized by Republic Act No. 4. The judgment is therefore modified so as to sentence the accused to imprisonment for five years. However, considering the degree of malice of the defendant, application of the law to its full extent would be too harsh and, accordingly, it is ordered that copy of this decision be furnished to the President, thru the Secretary of Justice, with the recommendation that the imprisonment herein imposed be reduced to six months. The appellant will pay the costs of both instances.

Paras, C. J., Pablo, Bengzon, Padilla Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

RESOLUTION

December 3, 1953

TUASON, J.:

The constitutionality of Republic Act No. 4, with reference to the penalty therein provided, was carefully considered. In branding imprisonment for five years too harsh and out of proportion in this case, we had in mind that six months was commensurate and just for the appellant's offense, taking into consideration his intention and the degree of his malice, rather than that it infringes the constitutional prohibition against the infliction of cruel and unusual punishment.

It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. "The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." (24 C. J. S., 1187-1188.) Expressed in other terms, it has been held that to come under the ban, the

punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." (Idem.) Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience. It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction to the duration of the imprisonment stipulated in the statute, that some members of the court at first expressed opposition to any recommendation for executive clemency for the appellant, believing that he deserved imprisonment within the prescribed range.

The sufficiency of the evidence for appellant's conviction under Republic Act No. 4 likewise had received close attention and study. There is no need on our part to add anything to what has been said, except to point out for clarification that the references to defendant's previous uses of his father's gun and the fatal consequences of his last use of it, were made simply to emphasize that his possession of the prohibited weapon was not casual, incidental, or harmless. His previous conduct was relevant in determining his motive and intention, and to disprove the claim that his father followed his son so as not to lose control of the firearm. It was far from the thought of the court to condemn the appellant for acts with which he had not been charged or of which he had been pronounced innocent.

The confiscation of the gun is, in our opinion, in accordance with section 1 of Republic Act No. 4, which reads:

"SECTION 1. Section twenty-six hundred and ninety-two of the Revised Administrative Code, as amended by Commonwealth Act Numbered fifty-six, is hereby further amended to read as follows:

"SEC. 2692. Unlawful manufacture, dealing in, acquisition, disposition, or possession of firearms, or ammunition therefor, or instrument used or intended to be used in the manufacture of firearms or ammunition.—Any person who manufactures, deals in, acquires, disposes, or possesses, any firearm, parts of firearms, or ammunition therefor, or instrument or implement used or intended to be used in the manufacture of firearms or ammunition in violation of any provision of sections eight hundred and seventy-seven to nine hundred and six, inclusive, of this Code, as amended, shall, upon conviction, be punished by imprisonment for a period of not less than one year and one day nor more than five years, or both such imprisonment and a fine of not less than one thousand pesos nor more than five thousand pesos, in the discretion of the court. If the article illegally possessed is a rifle, carbine, grease gun, bazooka, machine gun, submachine gun, hand grenade, bomb, artillery of any kind or ammunition exclusively intended for such weapons, such period of imprisonment shall be not less than five years nor more than ten years. A conviction under this section shall carry with it the forfeiture of the prohibited article or articles to the Philippine Government.

"The possession of any instrument or implement which is directly useful in the manufacture of firearms or ammunition on the part of any person whose business or employment does not deal with such instrument or implement shall be prima facie proof that such article is intended to be used in the manufacture of firearms or ammunition."

This provision does not say that firearms unlawfully possessed or carried are to be confiscated only if they belong to the defendant, nor is such intention deducible from the language of the act. We are inclined to, and do, believe that, except perhaps where the lawful owner was innocent of, or without fault in, the use of his property by another, confiscation accords with the legislative intent.

We can foresee the objection that such legislation deprives one of his property without due process of law. The answer to this is that ownership or possession of firearms is not a natural right protected by the Constitution.

Above the right to own property is the inherent attribute of sovereignty-the police power of the state to protect its citizens and to provide for the safety and good order of society. (16 C. J. S., 539, 540.) Pursuant to the exercise of police power, the right to private property may be limited, restricted, and impaired so as to promote the general welfare, public order and safety (Id., 611.) The power of the legislature to prohibit the possession of deadly weapon carries with it the power to provide for the confiscation or forfeiture of weapons unlawfully used or allowed by the licensed owner to be used.

The motion for reconsideration is therefore denied.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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