

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. RICARDO AQUINO Y ABALOS, DEFENDANT AND APPELLEE.

G.R. No. L-1429. May 16, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by the city fiscal from an order of the Court of First Instance of Manila dismissing an information. The court ruled on a motion to dismiss that the facts alleged in the information did not constitute a violation, as charged, of section 2692 of the Revised Administrative Code, as amended by Commonwealth Act No. 56 and further amended by Republic Act No. 4. The information reads:

"That on or about the 31st day of August, 1946, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one .45 caliber automatic pistol, serial No. 968445, with one clip containing seven rounds of ammunition, without having first secured the necessary license therefor."

Section 1 of Republic Act No. 4, the last amendment, makes it unlawful to manufacture, dispose, sell, acquire, possess, etc. firearms and ammunition. This provision was qualified by section 2 which is as follows:

"SEC. 2. The provisions of the foregoing section to the contrary notwithstanding, any person in possession of any of the prohibited articles therein mentioned, may, without incurring any criminal liability, surrender the same to such officer and within such period of time as the President shall by proclamation designate and fix immediately upon the approval of this Act: Provided, however, That this section shall not be interpreted to mean as in any way exempting from such liability any person, without the requisite license, found, within the aforementioned period of time, making use of any of said articles, except in self-defense, or carrying them on his person except for the purpose of surrendering them as herein required: Provided, further, That this section shall not in any way affect any case pending in court, on the date of the passage of this Act, for violation of section twenty-six hundred and ninety-two of the Revised Administrative Code; And provided, lastly, That the President may authorize any officer or agency of the Government to issue to the persons surrendering their firearms temporary licenses therefor for periods not exceeding three months at a time."

In pursuance thereof the President issued Proclamation No. 1, dated July 20, 1946, fixing August 31, 1946, as the last day, in the provinces of Luzon, on which possessors of firearms and ammunition might surrender them without incurring any criminal liability.

Although the law and the proclamation did not say so in express language, it is evident from their context that the penalty for the mere possession of firearms and/or ammunition was suspended up to August 31, 1946. In providing that firearms and ammunition could be surrendered not later than that date without the owner incurring criminal liability, the law and the proclamation by necessary inference legalized mere possession of these articles before the expiration of the stipulated period.

This meaning is confirmed by the express prohibition against the use and carrying of firearms and ammunition except in self-defense in the first case and with the object of presenting them to the authorities in the second. In

making these exceptions, the law made manifest the intent to permit, up to August 31, the legitimate use of firearm and the carrying thereof for the purpose of surrender. It would be senseless to stress the outlawing of the use and carrying of firearms and ammunition without mentioning the simple possession if having those articles, say in a wardrobe, were banned. And it would be an incongruity to allow the use and the carrying of one thing and punish the mere possession thereof which is necessarily included in the first two acts. Under the logical and natural process of exclusion, under the maxim "expresio unius est exclusio alterius," the specific prohibition to use and carry firearms excludes from the prohibition the keeping of them at home. As the greater includes the lesser, the same process of reasoning tells us that the express legalization during the period of respite of the use and carrying of firearms and ammunition, subject to the restriction above noted, of necessity also permitted the simple possession of those articles without penalty. As a general rule, one could not surrender a firearm or ammunition unless he owned or possessed it; unless in fact he had it in his possession for sometime before its surrender. At least this was the situation contemplated by Republic Act No. 4.

The judgment of the lower court is affirmed with costs de oficio.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Montemayor, and Reyes, JJ., concur.

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