

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. TEODORO TINAMISAN ET AL., DEFENDANT-APPELLEES.

G.R. No. L-4081. January 29, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

In August 1, 1949, the accused Teodoro Tinamisan and Apolonio Bendaño went out to fish in the Zamboanga sea, bringing with them five bottles of explosives. After throwing one into the water, they were caught and arrested, and the four bottles in the canoe seized. Charged with the crime of illegal fishing with explosives in Criminal Case No. 586 of the court of first instance, they were convicted, the four bottles having been exhibited by the prosecution.

Prosecuted again for illegal possession of explosives in Criminal Case No. 899 of the same court, they pleaded double jeopardy, on the ground that the explosives mentioned in the information are the identical four bottles presented in the previous criminal case. After hearing both sides, the judge sustained their plea and dismissed the second case.

Hence this appeal, wherein the single issue is whether the first prosecution bars the second

The use of explosives in fishing except when permitted under special circumstances by the Secretary of Agriculture is prohibited and penalized under Act No. 4005 as amended by Act No. 471.

The possession of dynamite or explosives without license from the Chief of Constabulary is prohibited and punished by Act No. 2225 as amended by Act No. 3023.

One offense is distinct from the other. When a man fishes with explosives, he violates the first-mentioned law or the second, or both, or he may commit no offense at all. No offense, if he obtained licenses from both the Secretary of Agriculture and the Chief of Constabulary. He infringes the first (and not the second) if he has no license from the Agriculture Secretary, but he has license from the Chief of Constabulary. He transgresses the second (but not the first) if he holds no license from the Constabulary, but he wields a permit from the Agriculture Secretary. He transgresses both laws, as in this case, when he exhibits no license at all.

Wherefore, one violation does not necessarily include, and is not necessarily included in the other. The double jeopardy rule does not attach[1].

Killing a person with a firearm may mean homicide or illegal possession of firearm, or both, or no crime at all. No crime, if the killing was done in self-defense and the killer had a permit to possess the firearm. Both offenses, if the killing was not justified and the offender had no permit. The first (and not the second) if there was permit to possess the weapon but no justification for the violence. The second, (and not the first) if the offender had no permit to keep the gun, but acted in self-defense. Prosecution for one offense, does not prevent trial for the other. Conviction for both may legally be had[2].

"Assault and carrying weapon. Conviction of an assault with intent to murder does not bar a prosecution for carrying a pistol, although both offenses were committed on the same occasion and were parts of the same transaction; and a conviction of the latter is not a bar to a prosecution for the former offense. A conviction for an assault with a weapon is not a bar to a subsequent prosecution for carrying a concealed weapon; and a conviction for carrying prohibited weapons is not a bar to a subsequent prosecution for assault and battery." (22 C. J. S. p. 430)

The trial judge was apparently impressed by the fact that the four bottles of explosives had been exhibited in the trial for illegal fishing. That was obviously done to invoke the provision that the finding of explosives in the fishing boat constitutes a presumption that said explosives had been used for fishing. But, in all probability, the accused could not have been convicted of illegal possession in that first trial, because, it may be supposed, the information for illegal fishing did not contain the allegation that they had no permit from the Chief of Constabulary to possess the explosives. Defendants, at least, do not claim the contrary.

His honor was of course right in saying that possession of the four or five bottles could not be split into two or more offenses of illegal possession[3]. But mark well, illegal possession. Before us are two offenses of a different nature: illegal fishing, and illegal possession.

The People's appeal is sustained, the order of dismissal revoked, and the case remanded for further proceedings. So ordered.

Paras, Pablo, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

[1] U. S. v. Tan Oco 34 Phil. 772; People v. Peñas 66 Phil. 682; People v. Cabrera 45 Phil. 82.

[2] People v. Maalihan 53 Phil. 295; Cf. People v. Labai 17 Phil. 240.

[3] U. S. v. Gustilo 19 Phil. 203.

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