

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SANTOS LOPEZ Y JACINTO, DEFENDANT AND APPELLANT.

G.R. No. L-1063. November 29, 1947

Ponente: TUASON, J.

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TUASON, J.:

Santos Lopez y Jacinto has been sentenced on a plea of guilty to an indeterminate penalty of from 1 year and 1 day to 1 year and 4 months of imprisonment and costs, for an alleged violation of section 878 in connection with section 2692 of the Revised Administrative Code, as amended by Commonwealth Act No. 56 and further amended by Republic Act No. 4. The information charges.

"That on or about the 21st day of August, 1946, in the City of Manila, Philippines, the said accused did then and there wilfully, and feloniously have in his possession and under his custody and control a firearm, to wit: one (1) .45 caliber pistol, serial No. 1952629 M., 1911 U.S. Army, and one (1) clip containing seven (7) rounds of ammunitions, without first having procured the corresponding license or permit therefor from the proper authorities."

Section 1 of Republic Act No. 4, which is the last enactment on the subject, makes it unlawful to manufacture, dispose, sell, acquire, possess, etc. firearms and ammunition. However, 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 period not exceeding three months at a time."

In pursuance of this provision 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 to surrender articles described in section 1 without incurring any criminal liability.

It will be seen that section 2 excluded from the operation of Sec. 1 up to August 31, 1946, possession of firearms and ammunition so long as they were not used for any purpose other than self-defense or carried for any purpose other than of surrendering them to the proper authorities. The Government does not dispute this interpretation. Although the law does not categorically state that criminal liability was temporarily lifted for mere possession of firearms and ammunition, that is the only construction compatible with the spirit and purposes of the enactment as

revealed by its context.

With the meaning of the law settled, has the appellant been properly convicted under the information? The controversy boils down to this proposition.

The Solicitor General contends that "when the appellant pleaded guilty to the crime charged in the information he is deemed to have admitted all the material allegations contained therein," citing a number of decisions by this Court. He also contends that "the question whether or not the appellant wanted to surrender the firearm and ammunitions is a matter of defense that should have been pleaded."

Courts and text writers are not in exact agreement on when the prosecution must negative the exceptions in a penal law; that is, when "it is necessary to state in the indictment that the defendant does not come within the exceptions, or to negative the provisos it contains." In *U.S. vs. Chan Toco* (12 Phil., 262), the Court discussed this question and pertinent authorities at length. It reached the conclusion, in prosecution for smoking opium, that "where one is charged with a violation of the general provisions of the Opium Law, it is 'more logical as well as more practical and convenient,' if he did in fact smoke opium under the advice of a physician, that he should set up this fact by way of defense, than that the prosecution should be called upon to prove that every smoker, charged with a violation of the law, does so without such advice or prescription."

However, that point is not here. The law involved in the case at bar is not of the class of laws referred to in the foregoing decision. The matters which the information now before us has failed to allege were not exceptions to a provision defining an offense. They were not such exceptions as under the *U. S. vs. Chan Toco* doctrine should have been averred or proved as a defense. Under Republic Act No. 4, the use or the carrying of firearms and/or ammunition was an ingredient, if it was not the sole ingredient, of the offense, the very acts which were punished subject to certain conditions. It has been seen that mere possession or custody of any of the articles specified in that Act, within the time designated in the proclamation, was not illegal unless the possessor made use of them or carried them on his person. What the accused could have been obliged to allege and prove, if he had been prosecuted for using or carrying on his person a firearm, was that he defended himself with the arm or was on his way to give it up, as the case might be.

It is then clear that the allegations in the information do not constitute a cause of action. The information does not state where or the circumstances under which the pistol and the ammunition were seized from the defendant. It is not alleged that the accused was using them or carrying them with him.

This infirmity was not cured by the defendant's failure to demur or by his plea of guilty. Although one of the specified grounds of a motion to quash a complaint or information is "that the facts charged do not constitute an offense," yet failure to move to quash does not operate as a waiver of objections to the sufficiency of the allegations in the complaint or information to charge a crime, or to the court's jurisdiction of the same. (Section 10, Rule 113, Rules of Court.) Failure to demur or move to quash waives only defects of form, not defects that go to the jurisdiction of the offense or to lack in some essential elements of the offense charged in the information.

It is true, as the Solicitor General says, that a plea of guilty admits all the material allegations in the information. "A plea of guilty is a confession of guilt and is equivalent to a conviction. * * * The effect of the plea of guilty, generally speaking, is a record admission of whatever is well charged in the indictment". (16 C. J., 402, 403.) The trouble here is that in the information there are no material allegations which the appellant could have admitted and on which he could be convicted. Like a failure to demur, a plea of guilty waives only defects which may be taken advantage of by motion to quash or by plea in abatement. "It does not cure jurisdictional defects in an indictment; and if the latter is insufficient, from the standpoint of failing either to confer jurisdiction or to set forth facts sufficient to constitute a public offense, the plea of guilty confesses nothing." (Ibid.)

The appealed judgment will be reversed and the information dismissed with costs charged de officio.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, and Bengzon, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Padilla joins in this decision.

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