

**THE PEOPLE OF THE PHILIP-PINES, PLAINTIFF-APPELLEE, VS.
ENRIQUE SOLLANO, JR., NE-POMUCENO LAUDE, ROMULO
TUMULAK, RODULFO TUMULAK, PINIONG LAUDE ALIAS EUFEMIO
TITO AND ATING LAUM...**

G.R. No. L-29570. October 29, 1971

Ponente: REYES, J. B. L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/70874030a291/>

REYES, J. B. L., J.:

Direct appeal, on pure questions of law, in-ter-posed by the above-named accused-appellant Enrique Sollano, Jr., against a judgment by the Court of First Instance of Cebu, in its Criminal Case No. V-8955, convicting him of illegal pos-session of firearms, and imposing the penalty of one (1) year and one (1) day to two (2) years and four (4) months upon an amended information which charged as follows:

"The undersigned Assistant Provincial Fiscal and designated as Special Prosecutor by Adminis-trative Order No. 113 of the Department of Justice, Manila, in accordance with the provision of Section 1686 of the Revised Administrative Code, as amended, accuses Enrique Sollano, Jr., Nepomuceno Laude, Romulo Tumulak, Rodulfo Tumulak, Piniong Laude, alias Eufemio Tito and Ating Laum, Jr., of the crime of Illegal Manufacture of Firearms and Spare Parts, committed as follows:

"That on or about 30 March 1962, and sometime before the said date, in the City of Danao and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and helping one another, with deliberate intent of gain, wilfully, unlawfully and feloniously did then and there make and manufacture firearms of different calibers and sizes or their spare parts, and owned, possessed under their control and operate tools, implements and machineries used in the manufacture of firearms or spare parts, and after having finished the firearms, did then and there sell and dispose same to un-authorized persons for gain and profit without pre-viously securing the necessary permit from the proper authorities to manufacture, make or deal in firearms for the purpose as provided by existing laws and re-gulations on the matter."

Appellant's co-accused were all acquitted on the ground of reasonable doubt.

The facts upon which appellant Enrique Sollano, Jr., was convicted for illegal possession of firearms may be briefly stated, as follows:

The Criminal Investigation Service of the Philippine Constabulary had received reports that firearms were being illegally manufactured in Danao City. Hence, an agent of the Service, one Nicanor Baring, was sent there by his chief, Major Jose Nazareno, to verify the information. Major Nazareno gave Baring money with which to purchase firearms. After mingling with the inhabitants of the place for sometime, Baring earned the confidence of appellant Enrique Sollano, Jr. On 15 March 1962, he bought from appellant three (3) revolvers and had allegedly observed the shop where the weapons were manufactured.

Baring returned to his unit with the information he had gathered and the three (3) revolvers he had purchased. So, Major Nazareno decided to raid the shop. Before carrying out his plan, he sent Baring ahead to pretend to buy two

(2) more revolvers. When Major Nazareno and his men, in a civilian truck labelled "Excursionists" arrived at the vicinity of the shop, on 30 March 1962, all the accused scampered away. At that time, Baring was testing the two (2) revolvers; Major Nazareno pretended to arrest him. The raiding party confiscated some paraphernalia allegedly used in the manufacture of firearms.

The five (5) revolvers were exhibited in court as Exhibits "A" to "E", and the trial court, finding them to be the ones sold by appellant Sollano, Jr., to agent Baring, convicted said appellant, not for manufacturing the said firearms but for illegal possession thereof.

The issues in this case are: (a) whether or not an accused can be convicted of illegal possession of firearms under an information for unlawful manufacture of firearms; and (b) whether or not evidence offered to prove unlawful manufacture of firearms can be the basis of conviction for illegal possession of firearms.^[1] The aforesaid two issues may be merged into the single issue as to whether or not illegal possession is an ingredient or forms a part constituting unlawful manufacture of firearms. For if there is variance between the offense charged in the information and that which is proved, the accused may be convicted of that which is proved, if it is included in the offense charged,² and an offense proved is included in the offense charged if its essential elements or ingredients constitute the offense proved.³

We agree with the Solicitor-General that "illegal possession of firearms does not necessarily include illegal manufacture of firearms, yet illegal manufacture of firearms necessarily includes illegal possession of firearms"; "that one who is found liable for illegal manufacture of firearms cannot at the same time be held liable for illegal possession of firearms, since the possession is inherent in manufacture, yet nothing prevents an accused from being found guilty of illegal possession of firearms but not of illegally manufacturing the same". (Brief, page 5)

But appellant tenders another angle in the present case. He claims that in another case he has been separately charged for illegal possession of firearms in the same Court of First Instance of Cebu, in its Criminal Case No. V-8961, involving the same firearms, marked as Exhibits "A" to "E" in Criminal Case No. V-8955 (the instant case on appeal). There is no record in the present case of the other alleged proceeding but assuming the existence thereof, its institution and pendency is no bar to appellant's conviction in the case at bar for illegal possession of firearms; and whether or not his present conviction would be a block to the continuance of the other case is a question that may be ventilated there.

The rule that an appeal in a criminal case opens the whole case for review is invoked by the People⁴ as justification for its prayer that the Supreme Court review the findings of fact of the trial court, allegedly for the reason that the original charge of illegal manufacture of firearms is sustained by the evidence. This cannot be done because this is a direct appeal from the judgment of the Court of First Instance and the Supreme Court has no appellate jurisdiction to review findings of fact in criminal cases, except in cases of automatic review where the penalty imposed is death or life imprisonment.⁵ The cited rule has to yield to the lack of this Court's appellate jurisdiction to review findings of fact in direct appeals.

FOR THE FOREGOING REASONS, the appealed Judgment is hereby affirmed, with costs against appellant Enrique Sollano, Jr.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Makasiar, J., took no part.

[1] Both offenses are punishable by the same provision of law, to wit:

"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 fire-arms and ammunition. - Any person who manufactures, deals in, acquires, disposes, or possesses, any 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 877 to 906, 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 or any kind of ammunition exclusively intended for such weapons, such period of imprisonment shall not be less than five years nor more than ten years. A conviction under this section shall carry with it the forfeiture of the prohibited articles to the Philippine Government.

The possession of any instrument or implement which is directly useful in the manufacture of firearms and 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." (Revised Administrative Code, as amended by Com. Act No. 56 and Rep. Act No. 4)

2 & 3 Per Sections 4 & 5, Rule 120, Rules of Court:

"Sec. 4. Judgment in case of variance between allegation and proof. - When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the de-fendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

"Sec. 5. When an offense includes or is included in another. - An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter."

4 Citing *Quemel vs. CA*, G.R. No. L-22794, 19 January 1968, 22 SCRA 45.

5 Section 17, Republic Act 296, as amended by Republic Acts 2613 and 5440.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.