

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AMI; APPELLANT, VS. PETRONIO REMERATA, DEFENDANT AND APPELLEE.*G.R. No. L-6971. February 17, 1956*

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

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The accused Petronio Remerata was convicted of stealing a rifle. After sentence was passed, the Fiscal filed another information charging him with illegal possession of the same firearms. Remerata set up autrefois convict, and upon, his motion, the Court of First Instance of Cotabato, invoking Rule 113, section 9, dismissed the second information, on the theory that the illegal possession was inseparable from the theft of which the accused had already been convicted and sentenced. The Fiscal appeals to this court from the order of dismissal.

The appeal must be sustained. While in stealing a firearm the accused must necessarily come into possession thereof, the crime of illegal possession of firearms is not committed by mere transient possession of the weapon. It requires something more: there must be not only intention to own but also intent to use (*People vs. Estoista*, [1] 49 Off. Gaz. [8] 3330), which is not necessarily the case in every theft of firearms. Thus, stealing a firearm with intent not to use but to render the owner defenseless, may suffice for purposes of establishing a case of theft, but would not justify a charge of illegal possession of the firearms, since intent to hold and eventually use the weapon would be lacking.

Besides, an information charging larceny will not usually sustain a conviction for illegal possession of firearms, for it does not ordinarily allege that the accused had no previous authority or license to keep the weapon, this circumstance being immaterial to the theft. On this basis, we held in *People vs. Alger*, [2] 48, Off. Gaz. (11) 4799, that a previous conviction for homicide is no bar to subsequent prosecution for illegal possession of the firearm employed in 'the killing.

The first information for theft in Remerata's case is not before us, not having been presented in evidence,, and we can not say that its terms would have enabled the State to convict him for illegal possession of the rifle involved.

Since there can be theft without illegal possession of firearms; and vice-versa, illegal possession may exist without the element of taking (asportation) that is essential in theft, conviction of one offense will not be a bar to prosecution for other.

The order dismissing the information is reversed and the case remanded for further proceedings. Costs against the accused. So ordered.

Parás, C. J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[1] 93 Phil., 647.

[2] 92 Phil., 227.

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