

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MESAL Y MIRANDILA, ACCUSED-APPELLANT.

G.R. No. 106643. May 16, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

EDWIN MESAL Y MIRANDILA is accused of "willfully, unlawfully and feloniously hav[ing] in his possession and control x x x one (1) M14 rifle, with Serial Number 1142311 x x x without any permit, authority and/or license to carry and possess the same x x x x being a member of the CT/NPA, a subversive organization x x x x"[1]

The antecedents: On 21 June 1989, following reports that armed NPA rebels were roaming certain areas in Sorsogon, Sorsogon, a team of PC Rangers of the 253rd PC Company stationed at Patrol Base Camp, Guinlajong, Sorsogon, proceeded to Brgys. Salvacion and Panlayaan for the purpose of conducting preventive patrol. Upon reaching Brgy. Panlayaan however the team was immediately engaged in a firefight by armed NPA rebels. When the fighting ceased, in addition to four (4) NPA casualties, the team caught accused-appellant Edwin Mesal lying flat on the ground at the back of a house with an M-14 rifle in his possession and ten (10) rounds of bullets in a magazine. The rifle, with Serial No. 1142311, was certified to be one of those taken from Patrol Base Bontuco, Gubat, Sorsogon, on 1 May 1989 during a raid conducted by a band of NPA rebels.

On the other hand, accused testified that he was a mere welder who was abducted by a band of NPAs[2] and that he was just taking cover when found hiding behind a house by PC Rangers in the morning of 21 June 1989 after the firefight.

On 2 November 1990, the Regional Trial Court of Sorsogon, Sorsogon, Br. 51, found accused guilty of illegal possession of firearms "in furtherance or in connection with the crime of rebellion, insurrection or subversion as defined and penalized under PD 1866," and imposed upon him the penalty of reclusion perpetua.[3]

In this appeal, accused contends that although the element of lack of a license or permit to possess the M-14 rifle confiscated from him was alleged in the Information the same was not proved in that neither the testimony of a representative of nor a certification from the PNP Firearms and Explosives Unit was presented by the prosecution to prove their allegation. Hence, he could not be convicted of the offense of illegal possession of firearms, an indispensable element of which is the lack or absence of a license to possess the firearm concerned. In addition, accused-appellant denies being a member of the NPA insisting that he was a mere welder working in Rizal, Sorsogon, where he was abducted by two (2) NPAs on 21 June 1989 for being a suspected military informer.[4]

With respect to the first contention, it is true that neither the testimony of a representative of, nor a certification from, the PNP Firearms and Explosives Unit was presented to prove the alleged lack of a license or permit on the part of accused-appellant to possess the particular M-14 rifle found in his possession. However, this is because the prosecution clearly found no need to do so. The records reveal that the allegation was successfully substantiated by other evidence which firmly and undisputably established that accused-appellant did not have, and could not

possibly have, the requisite license or authority to possess the M-14 rifle concerned. Technical Sgt. Alfredo Romasanta, Supply Officer of the PC-INP 253rd PC Company, testified that the rifle concerned is the type of weapon which only military men are authorized to possess^[5] and was in fact originally issued by CAA CAFGU Supply Officer Sgt. Cesar A. Vargas to Sgt. Nicanor Fedelizo,^[6] Patrol Base Commander of Patrol Base Bontuco, Gubat, Sorsogon, but which together with six (6) other rifles was looted by a band of NPAs which raided and overran the patrol base on 1 May 1989.^[7] Such testimony is backed by a "Harassment Report"^[8] which documented the raid and listed the firearms taken to be seven (7) M-14 rifles one of which was that bearing Serial No. 1142311,^[9] precisely the weapon found in the possession of accused-appellant. Obviously, the presentation of either the testimony of a representative of, or a certification from, the PNP Firearms and Explosives Unit, the usual evidence presented in prosecutions of this nature, may be dispensed with. Hence, the conviction of accused-appellant for illegal possession of firearms is justified. However, we cannot subscribe to the conclusion of the court a quo that the offense was done "in furtherance or in connection with rebellion, insurrection or subversion" for lack of sufficient evidence to support the same.

Regarding the circumstances surrounding the capture of accused-appellant, Sgt. Noel Gongona, Patrol Base Commander of Guinlajon, Sorsogon, and Cpl. Arnulfo Desuasido, PC-INP member of the 253rd PC Company, both members of the patrol team and witnesses for the prosecution, were one in saying that accused-appellant was lying flat on the ground at the back of a house holding the M-14 rifle but slowly stood up when caught by the team.^[10] Apart from the foregoing, no other evidence was presented that would qualify accused-appellant as a member of the Communist Party or that of its military arm, the New People's Army. They did not see accused-appellant actually fire shots at the government troops. In fact, Cpl. Desuasido admitted that they could not tell whether accused-appellant was a member of the NPA or not,^[11] and that he (accused-appellant) was so suspected only because he was caught at the place of the encounter with an M-14 rifle in his possession.^[12]

Accused-appellant on the other hand denied membership in the NPA and claimed to have been merely taken as their prisoner on the suspicion that he was a military informer. Considering his denial and that mere membership in the Communist Party is not per se unlawful,^[13] and that to be punishable it must be one that is made knowingly, willfully and by overt acts,^[14] the court a quo should not have hastily concluded that accused-appellant's possession of the M-14 rifle was done "in furtherance or in connection with the crime of rebellion, insurrection or subversion."

Thus, while we affirm the conviction of accused-appellant for illegal possession of a firearm, we cannot agree with the court a quo that he did so in furtherance of rebellion, insurrection and subversion. As already stated, the evidence on record is not enough to justify such a conclusion.

Section 1 of P.D. 1866^[15] prescribes the penalty for simple illegal possession of firearms to be reclusion temporal in its maximum period to reclusion perpetua. In the case of accused-appellant, since neither mitigating nor aggravating circumstances attended the commission of the offense, the aforementioned penalty should be applied in its medium period,^[16] which is eighteen (18) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal.^[17] Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, which is prision mayor maximum to reclusion temporal medium or ten (10) years and one (1) day to seventeen (17) years and four (4) months.^[18]

Accordingly, we impose upon accused-appellant an indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal maximum as maximum.

WHEREFORE, the Decision dated 2 November 1990 of the Regional Trial Court of Sorsogon, Sorsogon, Br. 51

is AFFIRMED with the MODIFICATION that accused-appellant EDWIN MESAL Y MIRANDILA is declared guilty beyond reasonable doubt of simple illegal possession of firearms only in violation of Sec. 1 of P.D. 1866 and is sentenced to suffer an indeterminate prison term ranging from ten (10) years and one (1) day of prison mayor maximum as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal maximum as maximum.

SO ORDERED.

Padilla, (Chairman), and Quiason, JJ., concur.

Davide, Jr., J., in the result.

Kapunan, J., on leave.

[1] Docketed as Crim. Case No. 2680 for "Illegal Possession of Firearms" of the RTC of Sorsogon, Sorsogon, Br. 51.

[2] TSN, 17 July 1990, pp. 9-11.

[3] Penned by Judge Simon L. Encinas, Rollo, pp. 11-13; Records, pp. 103-105.

[4] TSN, 17 July 1990, pp. 10-11.

[5] TSN, 12 July 1990, pp. 9-10.

[6] Exh. "C," Original Records, p. 78.

[7] Id., pp. 7-9.

[8] Exh. "D," Original Records, pp. 83-87.

[9] Exhs. "D-1," "D-2," Id., p. 85.

[10] TSN, 11 July 1990, pp. 10-11, 17.

[11] Id., p. 18.

[12] Id., pp. 18 & 20.

[13] *Lava v. Judge de Veyra*, No. L-23761, 4 September 1979, 93 SCRA 74.

[14] *People v. Ferrer*, Nos. L-32613-14, 27 December 1972, 48 SCRA 382, 401.

[15] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes.

[16] Art. 64 (1) in relation to Art. 65, The Revised Penal Code.

[17] Aquino, Ramon C., *The Revised Penal Code*, Vol. III, 1988 ed., p. 628, applying Art. 65 of the Revised Penal Code.

[18] Ibid.

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