PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLINAR LAZARO Y SERVANIA, ACCUSED-APPELLANT.

G.R. No. 112090. October 26, 1999

Ponente: GONZAGA_REYES, J.

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GONZAGA_REYES, J.:

This is an appeal from the decision[1] dated 1 March 1993 of the Regional Trial Court of Naga City, Branch 24, finding accused-appellant Apolinar Lazaro y Servania guilty of the crime of illegal possession of firearms and ammunition under Section 1 of Presidential Decree No. 1866 and sentencing him to suffer the penalty of reclusion perpetua and to pay the costs.

The information[2] dated 6 May 1991, docketed as Criminal Case No. 91-3483, filed against accused-appellant alleged:

> "That on or about May 5, 1991, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) handgun, Cal. 38 Revolver TM-Squires Bingham, SN-1029315 with 6 empty shells on (sic) the chamber, said accused not having any license and/or permit to possess and carry the same from the authorities charged with the issuance thereof. That the aforesaid firearm has been used in shooting two persons one of whom died and the other has (sic) serious condition at the Mother Seton Hospital."

It appears that a separate case for homicide, docketed as Criminal Case No. 91-3487, was filed against the accused[3] but was tried separately before the same judge.

Upon arraignment in Criminal Case No. 91-3483 (the illegal possession case), accused-appellant entered a plea of not guilty and thereafter, trial on the merits ensued.

To prove its case, the prosecution presented four (4) witnesses, namely: Pfc. Edilberto Puncia, Sgt. Alejandro Bonnet, Cpl. Jose Manzanero, and Major Jose A. Tuazon.

The facts as shown by the evidence of the prosecution reveal that on 05 May 1990, at around 3:30 p.m., Police Sergeant Alejandro Bonnet was on board a Mobile Patrol conducting an inspection of traffic policemen. While cruising along Panganiban Drive in Naga City, his attention was called by bystanders who were shouting that there was a bloodied man beside the driver of a Toyota type jeep that was traveling south. This prompted P/Sgt. Bonnet to go after the said vehicle.[4]

When the Toyota jeep stopped along Gen. Luna Street, Bonnet was able to see a man with blood all over him beside the driver.

P/Sgt. Bonnet then instructed the driver to follow the mobile patrol to the Bicol Regional Hospital.[5] When they arrived at the Bicol Regional Hospital, he saw that his station commander, Police Major Jose A. Tuazon, was waiting for them.

It appears that earlier Police Major Tuazon received a telephone call at around 4:00 a.m. informing him that a shooting incident had occurred at Queborac, Naga City[6] Major Tuazon then immediately dispatched Capt. Guisic and Pat. Barbosa to the crime scene in order to investigate the report.

Moments later, Major Tuazon received another telephone call, this time from the Naga City Hospital informing him that a wounded man, on board a yellow colored Toyota Tamaraw jeep driven by a person armed with a handgun, was brought for treatment at the hospital[7] Thereafter, Major Tuazon, together with Pfc. Edilberto Puncia proceeded to the Naga City Hospital. Upon their arrival, they were informed that the Toyota jeep had already left with the injured person and was on its way to the Bicol Regional Hospital. The police officers immediately proceeded to the said hospital. They took a shorter route and were able to arrive ahead of the Toyota jeep. After a short wait, they saw the Naga City Police Mobile Patrol arrive at the hospital escorting a Toyota Tamaraw jeep[8]

The injured person was brought inside for treatment. As he was previously informed that the driver of the jeep was armed with a handgun, Major Tuazon ordered the said driver to step out of his jeep. He then saw the driver with a handgun tucked in his waist, pull out the handgun[9] from its holster[10] and drop it at the back of the driver's seat[11] . Upon seeing the gun, Major Tuazon pulled the driver out of the vehicle, got hold of the gun which turned out to be a .38 caliber revolver bearing Serial Number 1029315[12] The gun contained six empty shells.[13]

Major Tuazon then confronted the driver and asked him why he was carrying a gun and whether he had a license to possess said firearm. The driver did not respond to his question[14]

Maj. Tuazon brought the driver to the police headquarters and turned over the firearm to the duty investigator, Cpl. Jose Manzanero.[15] At the police station, he learned that the name of the driver was Apolinar Lazaro, herein accused-appellant.

A certification dated August 20, 1991, issued by Supt. Antonio T. Sierra, Chief of the Firearms and Explosives Office (FEO) at Camp Crame was presented in court by the public prosecutor. The certification stated that accused-appellant is not a licensed or registered firearm holder of any kind or caliber.[16]

For his part, accused-appellant recounted the circumstances which led to his capture at the Bicol Regional Hospital. He Testified that on 5 May 1991, at around 9:00 a.m., he, together with his nephew Manolo Lazaro and Ricardo Ronquillo went to Marupit, Camaligan, Camarines Sur for a drinking spree.[17] While drinking, accused-appellant and Ricardo Ronquillo allegedly had a little discussion about a fishing net. They left the place at around 3:00 p.m. onboard a Toyota Tamaraw jeepney being driven by his nephew, Manolo Lazaro.[18] On the way back, Manolo Lazaro stopped the jeep in order to urinate and while he was alighting therefrom, accused-appellant saw Ronquillo draw a gun and point it at him (accused-appellant). Allegedly in self-defense, accused-appellant grappled for the possession of the gun and as a result, he and Ronquillo fell to the ground.[19] As they continued grappling for the gun, accused-appellant heard several shots go off. Immediately after the shots were fired and while still grappling for possession of the gun, he heard somebody shout that he was hit. He realized that it was his nephew, Manolo Lazaro, who was shot and who was telling accused-appellant to bring him to the hospital. As he was still grappling with Ronquillo, he could not immediately do anything about his nephew's cries for help. After a while, accused-appellant felt Ronquillo weakening and stop moving. He then drove Manolo Lazaro to the hospital as he was shouting for help. Accused-appellant claimed that he did not know what had happened to Ronquillo after he left him at the scene of the incident. He also could not recall where he had placed the gun.[20]

Accused-appellant declared that he drove the Tamaraw jeepney to the Naga City Hospital but they were not

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accepted as the hospital had no facilities for emergencies.[21] While driving to another hospital, he noticed a police car trailing them. He then gave a signal to the police car to escort them to a hospital. One of the policemen then alighted from the car and inspected the jeepney. The policeman did not take anything from the jeepney. The policeman then signaled accused-appellant to follow the patrol car to the Bicol Regional Hospital.[22] When they reached the hospital, accused-appellant went down from the Tamaraw jeepney and assisted in bringing down his nephew, Manolo Lazaro. Accused-appellant was then told by the policemen to ride in the police mobile car. As they were about to leave the hospital, he saw several persons searching the jeepney. The policemen then brought him to the City Jail where he remembered being asked why he was carrying a gun.[23] When the gun was shown to him, accused-appellant stated that he was not sure whether it was the same gun he was grappling with Ronquillo for, as the incident happened quite fast. He also cannot remember Major Tuazon's account that accused-appellant pulled the gun and holster from his waist. What he remembers is that after alighting from the jeepney, he went around the jeepney and assisted Manolo because the latter was then leaning on the side of the jeepney.[24]

In rebuttal, the prosecution presented Dr. Joel Jurado who testified that he conducted the autopsy on Ricardo Ronquillo. He found that the cause of death was due to loss of blood from his gunshot wounds.[25] The victim died instantaneously. In his opinion, the injuries were not inflicted accidentally as more than one shot was inflicted on the victim.[26]

In sur-rebuttal, accused-appellant testified anew and stated that both he and Ronquillo fell from the jeepney while grappling for the gun. He testified that during the struggle, there were times when the gun was in his possession and there were also times when it was in the possession of Ronquillo.[27] He cannot recall who was holding the gun when it was fired.

After trial, the lower court rendered a decision dated 1 March 1993[28] finding accused-appellant guilty as charged, the dispositive portion of which reads:

WHEREFORE, for all the foregoing, the Court finds accused Apolinar "Poly" Lazaro guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 1 of Presidential Decree No. 1866 and hereby sentences said accused to suffer the penalty of reclusion perpetua, and to pay the costs. The handgun (Exh. A) and the spent shells (Exhs. B, B-1 to B-5) are confiscated and ordered forfeited in favor of the government."

Hence, this appeal where accused-appellant raises the sole assignment of error that the trial court erred in finding the accused guilty beyond reasonable doubt of the crime of illegal possession of firearms and ammunition qualified by homicide.[29]

In cases involving illegal possession of firearms under P.D. 1866[30] , as amended, the prosecution has the burden of proving the elements thereof, viz.: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed it does not have the corresponding license or permit to possess the same.[31]

In the case at bench, the first element is beyond dispute as the subject firearm and six empty shells were recovered from the accused-appellant while he was alighting from the Tamaraw jeepney. Thus, Major Tuazon testified:

> Q: What did you actually do when the car stopped?
>
> A: Being aware that the driver was then armed, I was ready to get hold of him, and when I saw the gun tacked on his waist, he pulled it and dropped it at his back.
>
> Q: You said he pulled a handgun from his waist, will you please indicate on what particular place was it placed?

A: It was near, it was more in front of his waist. (The witness is pointing to the rightside middle portion of his waistline).

Q: And, in relation to the driver, where were you then when you saw him pulled (sic) that gun?

A: I was very near because I wanted to get hold of him.

Q: And, where did he dropped (sic) the said handgun, as you said?

A: Right at his back, at the back of the driver's seat.

Q: So, he just dropped it on the seat behind the driver's seat?

A: Yes, sir.

Q: And, that gun has a holster?

A: Yes, Sir. Inside a holster bag tacked on his waist.

Q: When he pulled that gun---did he pull that gun alone?

A: He pulled it together with the holster.

Q: And he placed the gun inside the holster right behind the driver's seat?

A: He pulled the gun together with the holster and dropped the same at his back.

Q: By the way, what kind of gun was that? A revolver?

A: Yes, Sir.

Q: And, what did you do upon seeing that the gun together with the holster was dropped by the accused at his back?

A: I pulled the driver out, and I immediately got hold of the gun."[32]

The subject firearm, its holster and the six empty shells were identified and offered in evidence during the trial.

As to the second element, accused-appellant contends that the prosecution failed to prove the absence of a license to carry a firearm as the prosecution merely marked in evidence a certification from the Firearms and Explosive Section in Camp Crame without presenting the person who issued the certification himself, a certain Antonio Sierra. Over the objection of accused-appellant's counsel, the lower court admitted the exhibit on the ground that the same is an official public record and because the fiscal stated that he himself saw the signatory sign the document.

The records of the case show that the prosecution merely presented in court the certification from the Firearms and Explosive Office before formally offering its documentary evidence. Thus:

PROS. ESTELA:

I am, Your Honor, please, formally submitting the certification issued at Camp Crame on August 20, 1991 of the firearms and explosives office, issued by the firearms and explosive office, issued by A.T. Sierra, Service Sup. MNSA, PNB Chief... firearms and explosive office to the effect which reads --- this is to certify that Apolinar Lazaro is not a licensed or registered firearms holder of any kind or caliber... (the fiscal is reading)

I would like to request that it be marked as Exhibit "D," for the purpose of this is to show to the Honorable Court that this accused is not a registered licensed holder of the subject firearm, and your Honor, may I please be allowed to rest my case.

> With the formal offer of evidence for the prosecution, with the testimonies of Pfc. Ed. Puncia, Sgt. Alejandro Bonnet, Cpl. Jose Manzanero, and Maj. Jose Tuazon, and the following (documentary) exhibits---
>
> X X X
>
> Exhibit "D" is the certification of the firearms explosive office to the effect that herein accused is not a licensed or registered holder of any firearm. This is dated August 20, 1991.
>
> Exhibit "D-1" which I request to be marked as such --- the signature of Antonio A. Sierra, the issuing officer of the firearms and explosives office. The signature was affixed in my presence when I personally procured this certification from the Camp Crame.
>
> With all of these evidence, testimonial, physical and documentary evidence, we close the presentation of evidence for the prosecution.
>
> ATTY. FERNANDEZ:
>
> XXX
>
> We have no objection to its submarkings. We are, however, objecting to Exhibits "D" and "D-1" being self-serving as the author of said certification was not presented for cross-examination.
>
> XXX
>
> PROS. ESTELA:
>
> XXX
>
> And, as to Exhibit "D" and Exhibit "D-1", this is an official document which is an exception to the hearsay rule. This is an official public document.
>
> COURT:
>
> No other objections?
>
> XXX
>
> Exhibit "D" is a public document, which was procured in line of duty, and considering that according to the Fiscal he himself was a witness to the signatory of the same.
>
> All the exhibits are admitted."

Accused-appellant contends that the trial court erred in admitting and relying upon the said certification considering that the person who made the document was not presented in court to testify. Thus, accused-appellant argues, the certification should have been excluded for being hearsay.

There is no merit in the above argument.

On several occasions, the Court has ruled that either the testimony of a representative of, or a certification from, the PNP Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms.[33] Moreover, the rule on hearsay evidence admits of several exceptions.

One such exception is that provided for under Rule 130, Section 44 of the Rules of Court which states as follows:

> "Rule 130, Section 44. Entries in official records. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by

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law, are prima facie evidence of the facts therein stated."

Relative to this provision, Rule 132, Section 28 of the same Rules allows the admission of the said document. Thus:

"Rule 132, Sec. 28. Proof of lack of record. - A written statement signed by an officer having custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contains no such record or entry."

In the case at bench, the Certification issued by the Commanding Officer of the PNP-Firearm and Explosives Office, which is the repository of all records regarding firearms in the Philippines, is competent and admissible evidence to prove that accused-appellant is not a licensed holder or possessor of a firearm of any kind or caliber. Indeed, the certificate of a custodian that he has diligently searched for a document or an entry of a specified tenor and has been unable to find it ought to be as satisfactory an evidence of its non-existence in his office as his testimony on the stand to this effect would be.[34]

Accused-appellant finally argues that assuming that he is guilty, he should only be convicted of the crime of simple illegal possession not qualified by homicide. He offers two propositions in support of this argument.

First, accused-appellant argues that the information filed against him in Criminal Case No. 91-3483 did not clearly allege the crime of homicide. Instead, he argues, it was the separate information for homicide filed in Criminal Case No. 91-3487 which alleged all the elements of homicide. He states further that the case for homicide, for which he was likewise convicted, is now the subject of an appeal with the Court of Appeals.

Second, accused-appellant argues that assuming that the information in Criminal Case No. 91-3483 sufficiently alleged the said qualifying circumstance, he still could not be convicted of the crime of illegal possession of firearms and ammunition qualified by homicide as the prosecution failed to prove the fact of homicide during the trial of Criminal Case No. 91-3483. The prosecution, he contends, did not produce any eyewitness to the homicide. Instead, the alleged eyewitness to the homicide, Manolo Lazaro, was only presented in Criminal Case No. 91-3487, the homicide case, which was being tried separately.

We do not find it necessary to consider accused-appellant's arguments. The enactment of Republic Act No. 8294, which amended the provisions of P.D. 1866, has rendered said arguments moot and academic.

Accused-appellant was convicted of illegal possession of firearms under Section 1 of P.D. No. 1866 which was the governing law at the time the crime was committed in 1991. Section 1 of P.D. 1866 provides:

"Sec. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any firearm, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed." (Underscoring supplied)

Under the ruling in People vs. Quijada,[35] violation of P.D. 1866 is an offense distinct from murder or homicide and the accused is culpable for two separate offenses.

Republic Act No. 8294 has since amended P.D. No. 1866 by reducing the penalties for simple and aggravated forms of illegal possession and considering the use of an unlicensed firearm simply as an aggravating

circumstance in murder or homicide. The law now provides:

> "Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm such as rimfire handgun, .380 or .32 and other firearm of similar firepower, ammunition, or machinery, tool or instrument used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prision mayor in its maximum period and a fine of Thirty thousand pesos (P30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger than .38 caliber and 9 millimeter such as caliber .40, .41, .45 and also lesser caliber firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

> If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." (underscoring supplied)

In view of these amendments introduced by R.A. 8294, this Court has recently in the case of People vs. Molina,[36] and reiterated in People vs. Feloteo,[37] that there can be no separate conviction of the crime of illegal possession of firearms under P.D. 1866. Thus in People vs. Molina, it was held:

> "Fortunately for appellants, however, RA 8294 has now amended the said decree and considers the use of an unlicensed firearm simply as an aggravating circumstance in murder or homicide, and not as separate offense. The intent of Congress to treat as a single offense the illegal possession of firearm and the commission of murder or homicide with the use of such unlicensed firearm is clear from the following deliberations of the Senate during the process of amending Senate Bill No. 1148:

'Senator Drilon. On line 18, we propose to retain the original provision of law which says, 'If homicide or murder is committed with the use of unlicensed firearm.' And in order that we can shorten the paragraph, we would suggest and move that the use of the unlicensed firearm be considered as an aggravating circumstance rather than imposing another period which may not be in consonance with the Revised Penal Code.

So that if I may read the paragraph in order that it can be understood, may I propose an amendment to lines 18 to 22 to read as follows: 'If homicide or murder is committed with the use of the unlicensed firearm, SUCH USE OF AN UNLICENSED FIREARM SHALL BE CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE.'

xxx xxx xxx

> Senator Santiago. Mr. President.
>
> The president. With the permission of the two gentlemen, Senator Santiago is recognized.
>
> Senator Santiago. Will the principal author allow me as co-author to take the [f]loor to explain, for the information of our colleagues, the stand taken by the Supreme Court on the question of whether aggravated illegal possession is a complex or a compound offense. May I have the [f]loor?
>
> Senator Revilla. Yes, Mr. President.
>
> Senator Santiago. Thank you.
>
> In 1995, the Supreme Court held that when the crime of killing another person is committed with the use of an unlicensed firearm, the ruling in the case of People vs. Barros was that the crime should only be illegal

> possession of firearm in its aggravated form. But in the later case, in May 1996, in the case of People vs. Evangelista, the court apparently took another position and ruled that when a person is killed with the use of an unlicensed firearm, it is possible to file two separate information(s)-one for murder and one for illegal possession of firearms.
>
> In other words, in two successive years, the Supreme Court issued two different ways of treating the problem. The first is to treat it as one crime alone in the aggravated form, and the second is to treat it as two separate crimes.
>
> So at this point, the Senate has a choice on whether we shall follow the 1995 or the 1996 ruling. The proposal of the gentleman, as a proposed amendment is to use the 1995 ruling and to consider the offense as only one offense but an aggravated form. That could be acceptable also to this co-author.
>
> The Presiding Officer [Sen. Flavier]. So, do I take it that the amendment is accepted?
>
> Senator Revilla. Yes, it is accepted, Mr. President.
>
> The Presiding Officer [Sen. Flavier.] Thank you. Is there any objection to the amendment? [Silence] There being none, the amendment is approved.'
>
> Although the explanation of the legal implication of the Drilon amendment may not have been very precise, such modification, as approved and carried in the final version enacted as RA 8294, is unequivocal in language and meaning. The use of an unlicensed firearm in a killing is now merely an aggravating circumstance in the crime of murder or homicide. This is clear from the very wordings of the third paragraph of Section 1 of RA 8294, which reads:

'If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.'

> Furthermore, the preceding paragraphs, also in Section 1, state that the penalties for illegal possession of firearms shall be imposed 'provided that no other crime is committed.' In other words, where murder or homicide was committed, the separate penalty for illegal possession shall no longer be meted out since it becomes merely a special aggravating circumstance.[38]

In the case at bench, it is not disputed that accused-appellant was charged, tried and convicted for two separate crimes of illegal possession and homicide. Accused-appellant, in his brief, refers to the homicide case in arguing that his conviction in the illegal possession case was not proper.[39] Similarly, the Solicitor-General, in his Brief, mentioned the homicide case in justifying the sentence handed down by the trial court.[40] Finally, the records themselves show that trial in the two cases proceeded separately.[41] The two separate cases, Criminal Case No. 91-3487 (for homicide) and Criminal Case No. 91-3483 (for illegal possession of firearm) were not tried jointly, although filed in the same trial court. Criminal Case No. 91-3487 was appealed to the Court of Appeals.[42]

In view of the amendments introduced by Republic Act 8294 to Presidential Decree 1866, separate prosecutions for homicide and illegal possession are no longer in order. Instead, illegal possession of firearms is merely to be taken as an aggravating circumstance in the homicide case.

R.A. 8294 took effect on July 6, 1997. The crime involved in the case at bench was committed on May 5, 1991. As a general rule, penal laws will generally have prospective application except where the new law will be advantageous to the accused. In this case R.A. 8294 will spare accused-appellant from a separate conviction for the crime of illegal possession of firearm. Accordingly, said law should be given retroactive application.

In People vs. Valdez,[43] this Court stated:

> Republic Act No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The

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> crimes involved in the case at bar were committed on September 17, 1995. As in the case of any penal law, the provisions of Republic Act No. 8294 will generally have prospective application. In cases, however, where the new law will be advantageous to the accused, the law may be given retroactive application (Article 22, Revised Penal Code). Insofar as it will spare accused-appellant in the case at bar from a separate conviction for the crime of illegal possession of firearms, Republic Act No. 8294 may be given retroactive application in Criminal Case No. U-8749 (for Illegal Possession of Firearm) subject of this present review.
>
> As a word of caution, however, the dismissal of the present case for illegal possession of firearm should not be misinterpreted as meaning that there can no longer be any prosecution for the crime of illegal possession of firearm. In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted coup d'etat under Section 3).
>
> However, the use of an unlicensed firearm in the case at bar cannot be considered as a special aggravating circumstance in Criminal Case No. U-8747 (for Complex Crime of Multiple Murder), also under review herein, because it will unduly raise the penalty for the four counts of murder from four reclusion perpetua to that of four-fold death. Insofar as this particular provision of Republic Act No. 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an ex-post facto law.

Accordingly, and in line with the above ruling, the accused-appellant should be spared from a separate conviction for the crime of Illegal Possession of Firearms, which is the subject of the present review.

IN VIEW WHEREOF, we REVERSE and SET ASIDE the decision finding accused-appellant guilty for violation of P.D. 1866. Accused-appellant is hereby acquitted of the said crime. Criminal Case No. 91-3483 is DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Per Judge Carmen G. San Vicente.

[2] Rollo, p. 8.

[3] Records, pp.6-12.

[4] TSN, October 7, 1990, pp. 23-24.

[5] Ibid., p. 25.

[6] TSN, October 17, 1991, p. 4.

[7] Ibid., pp. 4-5.

[8] Ibid., p. 6.

[9] Exhibit "A".

[10] Exhibit "A-1".

[11] TSN, October 17, 1991, pp. 6-9.

[12] Ibid., p. 12.

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[13] Exhibits “B” to “B-5”.

[14] TSN, October 17, 1991, p. 11.

[15] TSN, October 16, 1991, p.4.

[16] TSN, October 17, 1991, p. 20.

[17] TSN, May 27, 1992, pp. 3-6.

[18] Ibid., pp. 6-7.

[19] Ibid., pp. 7-8.

[20] Ibid. p. 9.

[21] Ibid., p. 10.

[22] Ibid., pp. 10-12.

[23] Ibid., pp. 12-13.

[24] Ibid., pp. 16-19.

[25] TSN, July 21, 1992, pp. 21-22.

[26] Ibid., p. 27.

[27] TSN, August 26, 1992, p. 4.

[28] Rollo, pp. 17-20.

[29] Appellant’s Brief, p. 1; Rollo, p. 34.

[30] “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”

[31] People vs. Khor, G.R. No. 126391, May 19, 1999; People vs. Bergante. 286 SCRA 629.

[32] TSN, October 17, 1991, pp. 8-10.

[33] Padilla vs. Court of Appeals, 269 SCRA 402; Rosales vs. CA, 255 SCRA 123; People vs. Orehuela, 232 SCRA 82.

[34] 3 Wigmore on Evidence, cited in People vs. Quebral, 68 Phil. 567.

[35] 259 SCRA 191.

[36] 292 SCRA 742.

[37] 295 SCRA 607.

[38] 292 SCRA 742 @ pp. 779-782.

[39] Rollo, pp. 47-49.

[40] Rollo, pp. 102-103.

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[41] Records, pp. 6-12.

[42] The Court of Appeals affirmed the judgment of conviction in its Decision dated March 29, 1996. Motion for reconsideration of the said decision was denied in a Resolution dated July 16, 1996. Petition for review on certiorari was denied by this Court on the ground that there was no reversible error, entry of judgment was made on November 13, 1996. The judgment of conviction in Criminal Case No. 91-3487 for homicide has thus become final.

[43] G. R. No. 127663, prom. March 11, 1999.

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