

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO TOBIAS @ “DING,” ACCUSED-APPELLANT.

G.R. No. 114185. January 30, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

For the death of Esteban "Jojo" Lim, Jr., accused Ricardo Tobias was charged with murder in a criminal complaint[1] filed on 8 October 1990 with Branch 2 of the Municipal Trial Court (MTC) of Santiago, Isabela. The case was docketed as Criminal Case No. II-1753.

On 22 November 1990, upon motion [2] of the Prosecutor, the complaint was amended [3] from that of murder to "Violation of PD 1866 Resulting to Murder" following the issuance by Capt. Abraham E. Garcillano, Chief of the Records, Legal and Research Branch of the Firearms and Explosives office (LRB-FEO) in Camp Crame, Quezon City, of a certification dated 17 October 1990 that the firearm used in the killing of Lim was "not licensed/registered." [4]

The MTC admitted the amended complaint, [5] forthwith issued a warrant of arrest, and recommended no bail. [6]

The accused filed a motion to reconsider [7] the admission on the ground that the amended complaint does not refer to the same offense charged in the original complaint nor to an offense necessarily included therein but to one distinct from that originally charged. This motion was denied by the MTC under Section 14, Rule 110 of the Rules of Court. Appropriate preliminary investigation was had solely on the basis of the prosecution's evidence, since the accused did not submit his counter-affidavits and other supporting evidence required in the subpoena issued to him.

Having found a prima facie case against the accused, the MTC ordered the transmittal of the record of the case to the office of the Provincial Prosecutor for appropriate action pursuant to Section 5, Rule 112 of the Rules of Court.

On 10 January 1991, the office of the Provincial Prosecutor of Isabela filed before the Regional Trial Court (RTC) of Isabela an information [8] charging the accused with "Qualified Illegal Possession of Firearm Used in Murder." The accusatory portion thereof reads as follows:

That on or about the 5th day of October, 1990, in the municipality of Santiago, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being allowed or authorized by law to keep, possess and carry firearms, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) Browning pistol, Caliber 9MM with Serial No. RPT 3221943 without first having obtained the necessary permit and/or license therefor and on the occasion of such possession, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and shoot with the said illegally possessed firearm one Esteban Lim, Jr. alias Jojo, inflicting upon him gunshot

wounds on the different parts of his body which directly caused his death due to severe hemorrhage.

The case was docketed as Criminal Case No. 1476 and raffled to Branch 18 of the said court stationed in Ilagan.

The accused filed a petition for bail on 11 January 1991. [9] Upon arraignment on 30 January 1991, the accused entered a plea of not guilty. [10]

The trial court ultimately allowed bail to the accused [11] in the amount of P100,000.00 when the prosecution changed its stand from a vigorous opposition [12] to one recommending the amount of P100,000.00. [13] The accused filed his surety bond and was consequently ordered released from detention. [14]

In its order [15] of 20 March 1991, the trial court decreed the transfer of Criminal Case No. 1476 anant to "Circular No. 7 (of this Court) in connection with Batas Pambansa Blg. 12d the record thereof to Branch 21 of the Isabela RTC in Santiago pursu9."

At Branch 21, the case was docketed as Criminal Case No. 0920. [16] The trial on the merits of the case suffered delays in view of various incidents disclosed by the records which include, inter alia, the attempts of the defense and then later the prosecution itself to return the case to Branch 18 in Ilagan, Isabela; the filing with this Court of petitions for certiorari to question the denial of the transfer and the denial of a motion to disqualify the trial judge; the non-appearance of counsel de parte for the accused; and the motion of the de officio counsel to be relieved as such.

The evidence for the prosecution consisted of the testimonies of Clarita Lim, the victim's widow; Pacita Recto, Clarita Lim's mother; Susana Recto, Clarita's younger sister; Renato Turingan, Deputy Chief of Police of Santiago, Isabela; Dr. Ruben Angobong, Regional Medico-Legal officer of the National Bureau of Investigation (NBI) detailed in Ilagan, Isabela; and SPO1 Marie Vida B. Mencias, Secretary of Capt. Abraham Garcillano.

The testimonies of prosecution witnesses Clarita Lim, [17] Pacita Recto, [18] and Susana Recto [19] established the following facts as to how the victim, Esteban "Jojo" Lim, Jr., (hereafter Jojo) was killed by the accused:

At around midnight of 5 October 1990, the accused was drinking with Gerry Giron, Tom Taguinod, and another unidentified person in front of the "Body Botique Tailoring," an establishment owned by the accused. The Body Botique is adjacent to the video shop owned by Jojo. Only a wall separates the two shops. Jojo was then inside the video shop with his wife Clarita and his sister-in-law, Susana. Suddenly, Clarita heard a gunshot [20] and then the banging of the shop's door. Jojo peered out through the door and saw that the accused was the noisemaker. Jojo stepped out of the video shop and admonished the accused's group. The accused responded by suddenly strangling Jojo with his (accused's) right arm. While Jojo was struggling to free himself, Gerry Giron threw a stone at him, hitting him in the face. Jojo broke free from the accused and chased Giron. It was at this point that the accused, who was then standing about three or four meters behind, shot Jojo. About thirty seconds later, the accused, now standing two meters from Jojo who was already lying on the ground, fired four more shots into the latter. Clarita immediately went to Jojo.

Renato Turingan, the Deputy Chief of Police in Santiago, Isabela, was on patrol when he was called to the crime scene by a tricycle driver. At the crime site, he saw the accused holding a gun while Jojo was lying on the ground. He asked the accused why he had a gun, and the latter answered that he had shot Jojo. Turingan confiscated the accused's gun. Upon being told by the accused that Jojo was holding a hand grenade, Turingan searched the place but found for empty .9mm caliber shells only. He then ordered the driver of the patrol car to take Jojo to the hospital. He, for his part, took the accused to the police station where he asked the latter to present a license for the confiscated firearm. The accused offered his "temporary permit." The police then conducted an investigation on the accused. [21]

Jojo expired at the hospital at around 4:30 a.m. of 5 October 1990. Dr. Ruben Angobong conducted the re-autopsy of the cadaver of Jojo. He found four gunshot wounds, the most fatal [22] of which he designated as "gunshot wound no. 1." [23] This wound was located at the victim's back and followed a path "from rear to front." Dr. Angobong theorized that the assailant was behind the deceased when the former fired the bullet which caused the wound [24] and that, considering the horizontal trajectory of the bullet, both victim and assailant were standing. [25]

Gunshot wound number 2 [26] had an entry point at the back of the victim's right thigh; it had no exit point, as the bullet remained at the end of the thigh bone, inside the victim's body. [27] The entry point of gunshot wound number 3 [28] was at the back of the right thigh with exit point at the right side of the thigh. Gunshot wound number 4 [29] had an entry point at the back of the right leg and an exit point at the right side of the leg. The bullet in each of these wounds followed a rear-to-front and upward path, judging from which Dr. Angobong agreed with the examining prosecutor that in these three wounds the victim was shot from the rear while he was lying on the ground. [30]

As a consequence of the killing of Jojo, Clarita declared that she spent as follows: P18,000.00 for the medical treatment of Jojo; P20,000.00 for funeral expenses; P6,000.00 for the wake; and P6,500.00 for the interment. [31]

SPO1 Marie Vida B. Mencias, who was authorized to appear for Capt. Abraham Garcillano, testified that she prepared the certification issued by Capt. Garcillano that the accused was not licensed to possess a firearm of any kind. She drafted the certification after verifying the master list which enumerates the persons licensed to possess firearms as of October 1990. Since the FEO records disclosed that the accused was not so licensed, Capt. Garcillano signed the certification. [32] This certification (Exhibit "J") dated 17 October 1990 reads as follows:

THIS IS TO CERTIFY that Ricardo P. Tobias of Santiago, Isabela is not a licensed/registered firearm holder of any kind and caliber per verification from available records on file this Unit as of this date.

Further certified that Pistol Cal. .9mm Browning with Sn-RPT3221943 is not licensed/registered, hence considered loose firearm, per verification from available records on file this Unit as of this date.

SPO1 Mencias added that the FEO keeps copies of all issued gun licenses as well as the applications therefor. Even firearm licenses issued by Regional Commanders are registered with the FEO, and there can be no instance where a license issued by a Regional Commander is not registered with the FEO. [33]

On the other hand, the defense presented seven witnesses, namely, the accused himself, Jovencio Corpuz, Tom Taguinod, SPO3 Julio Palattao, SPO1 Cesar Gabitan, SPO3 Elpidio Agngarayngay, and SPO3 Domingo Malaya. The first three testified on Jojo's killing. Palattao, Gabitan, and Agngarayngay testified on the accused's firearm license. Malaya testified on the record of the Narcotics Command (NARCOM) showing that Jojo was a marijuana user.

The evidence for the defense is summarized as follows:

In the evening of 4 October 1990, Jojo Lim was at the LBC Nightclub arguing with someone. He seemed to be drunk, as when he left the club he was walking "in a zigzag manner." [34]

At that same moment, the accused was drinking with Tom Taguinod and Gerry Giron in front of the Body Botique. At past 11:00 p.m., Jojo arrived driving a motorcycle. He was driving fast, and when he was turning right to his video shop, the front wheel of his motorcycle bumped the door of his shop, thereby surprising the accused and his companions. The motorcycle bounced off the door and bumped it a few more times. This drew out laughter from the accused's group. Jojo looked at the group before getting inside his shop. [35]

Later, the accused and his companions heard Jojo's motorcycle again bumping the video shop's door, but this time from inside the shop. When the door opened, the motorcycle came out running fast and turned toward the provincial road. Some minutes later, the motorcycle came back, again running fast, and turned towards Jojo's shop. The motorcycle toppled down, pinning Jojo's right leg to the ground. Jojo lifted the vehicle to free his leg and then quickly went to the accused's group. When he was near the group, he brought out something from his right pocket which he held with two hands. When Jojo was about two meters away from the group, his hands separated. Taguinod saw a metal ring in Jojo's left hand and another object in the right hand. Jojo exclaimed "Sabay-sabay tayong sasabog dito [We will all explode here]," and Taguinod then realized Jojo was holding a hand grenade. [36]

Jojo grabbed the accused's right shoulder and pushed the latter several times. From his vantage point, Taguinod saw Jojo trying to insert the grenade into the accused's shirt while holding the accused by the shoulder. The accused pleaded with Jojo to no avail. Giron then threw stones at Jojo. The latter went after Giron who ran towards the backdoor of the Body Botique, leaving Jojo out in the street. Then Taguinod heard four successive gunshots about one second apart. He looked for the source of the shots and found the accused holding a gun. [37]

The accused testified that his authority to bear a firearm at the time of the crime where his permit to carry and his application. He filed his application for a firearm license at Tuguegarao in June 1990. He claimed that the application was approved by one Col. Sacramento. On 5 October 1990, he had a permit which allowed him to carry his firearm outside of his residence. On cross-examination, the accused revealed that he inherited his gun from his father. His father never procured a license for the firearm. He added that from the time he applied for a firearm license and until his application was approved, he kept his gun inside his house. [38]

SPO3 Julio Palattao of the Civil Security Force, District II, in Tuguegarao, Cagayan, testified that the accused applied for a firearm license and that a temporary license was extended to him on 21 September 1990, as evidenced by a certification issued by District II Commander Roberto Sacramento. Palattao further declared that the accused was included in a list of licensed firearm holders as of 17 July 1991 and was issued a permit to carry a firearm, valid from 21 September 1990 to 20 September 1991. [39]

SPO1 Cesar Gabitan, PNP member, [40] brought before the trial court a Master List of firearm holders who were issued licenses as of 17 July 1991. He declared that based on the records in his possession, the accused was a licensed firearm holder as of 4 October 1990. Gabitan also explained the disparity between the accused's evidence and that of the prosecution regarding the custody by the FEO of the accused's firearm license. He averred that at the time Capt. Garcillano issued the certification that the accused was not a licensed/registered firearm holder the firearm records of the accused had not yet been transmitted from RECOM II to the FEO. The said records were received by the FEO only on 30 October 1990, while Capt. Garcillano issued his certification on 17 October 1990. [41]

PO3 Elpidio Agngarayngay, whose primary function is to represent the Chief of the FEO, especially with regard to the trial of cases of violation of P.D. No. 1866, brought before the trial court documents showing that the accused was issued a computerized firearm license on 17 July 1991. He also attested that a copy of the accused's temporary license could not be found in the FEO files, but he brought a certification [42] issued by Senior Inspector Joel Crisostomo Garcia, Chief of the Records Branch, FEO, stating that the license could have been misplaced "when the Computer Center of the PNP started pouring into th[e] [o]ffice sacks by sacks of temporary firearm licenses at a time when th[e] [o]ffice was faced with the multifarious tasks as a result of the [r]e-registration of licensed firearms nationwide." [43]

In its decision [44] dated 11 January 1994 and promulgated on 8 February 1994, the trial court found the accused guilty as charged; sentenced him to a penalty of life imprisonment; and ordered him to pay the victim's widow the following amounts: (a) P50,500.00 as actual damages; (b) P50,000.00 as death indemnity; and (c) P100,000.00 as moral damages.

As to the murder of Jojo, the trial court observed and concluded:

According to the prosecution Jojo Lim went out to reprimand the accused and his companions not to make noise and because of this the accused locked the neck of Jojo with his right arm. But according to the defense it was Jojo who held the neck of the accused. Between this two conflicting statements, the Court can only conclude that there was a quarrel between the accused and Jojo Lim. This is so because the two are not friendly with each other. For two years already there was a feud between them because Jojo did not like to lend video tapes to the accused who did not pay and would not return what he borrowed. The level of irritation between the two is too shallow it would not take too much to ignite a fight. The accused was drunk that night and according to the witness Jovencio Corpuz, Jojo Lim was also drunk that night. It was therefore inevitable that there was a quarrel or even a fight. While the two were fighting, Manuel Giron threw a stone at Jojo. This prompted Jojo to run after Giron. When Jojo chased Giron, the accused took the opportunity to bring out his gun and then shoot Jojo with it. Jojo was shot at the back. Even Tom Taguinod agrees that the accused shot Jojo at the back while the latter was chasing Manuel Giron. Consequently there is no question whatsoever that the theory of self-defense crumbles because the accused in fact shot Jojo Lim treacherously in cold blood, not only once but five times, four times more when Jojo was already lying on the ground. [45]

For its ruling that the firearm used by the accused, a Browning .9mm pistol with serial number RPT 3221943 (Exhibit "A"), was unlicensed, the trial court relied on the certification issued by Capt. Abraham Garcillano (Exhibit "J"); the testimony of SPO1 Marie Vida Mencias who prepared the certification after verifying the records of the FEO, more particularly the Master List of Persons Issued License as of October 1990, which she produced before the trial court; and the copy of the computerized "Masterlist of Registered Firearms Holder," which the defense offered in evidence as Exhibit "4," as to which the trial court observed:

What the records of the Firearms and Explosives office particularly the Computerized Master List Exhibit "4" show, as later testified to by SPO3 Cesar Gabitan, Record Verifier and Temporary Legal Records Custodian, FEO, is that a firearm license for a Pistol Browning 9mm was issued to Ricardo Tobias on July 17, 1991. According to SPO3 Gabitan:

Q But does your record now show the records that you brought show that Ricardo Tobias was holding license on October 1990?

A No, sir.

Q So your records which you brought now in this Court do not show Ricardo Tobias was license holder in October 1990?

A It does not show, sir.

Q In fact what your records show is that Ricardo Tobias became license holder as of December 1990?

A Yes, sir.

Q You did not have any other records to show that Ricardo Tobias was licensed as of October 1990?

A As of October 1990, no, sir.

Q Are you sure?

A Yes, sir. (T.s.n., Hearing on January 27, 1993 Page 36) [46]

The trial court noted that the foregoing revelation of SPO3 Gabitan was confirmed by defense witness SPO3 Agngarayngay, thus:

Confirming this, another defense witness, SPO3 Elpidio Agngarayngay who is also working at the FEO, Camp Crame also stated that there is no record of a temporary license issued to the accused as in fact a Certification was issued by this office as follows:

"THIS IS TO CERTIFY that Ricardo Tobias @ Ding, no middle name and unknown address is not a licensed firearm holder of any kind and caliber per verification from available records on file this office as of this date. However we have on file a certain Ricardo Tobias y Paz of Santiago, Isabela as a licensed/registered firearm holder of a Pistol, Browning, Caliber 9MM, with Serial Number RPT 3221943 issued on July 1991 in his capacity as a businessman.

Further certify that the Temporary license regarding the firearm mentioned above could not be located despite diligent search by personnel this Office. Said license copy was possibly misplaced when the Computer Center of the PNP started pouring into this Office sacks by sacks of temporary firearm licenses at a time when this Office was faced with the multifarious tasks as a result of the Re-registration of licensed firearms nationwide."

The Certification, having been issued at the instance of the defense it is understandable that it volunteered the statement in the latter part thereof that their records must have been misplaced. This is of course an onerous statement and it was meant to give credence to the claim of the accused that he was given a temporary license and a permit to carry firearms by the Regional Office on September 21, 1990. He submitted both the temporary license Exhibit "3" and the Permit to Carry Firearm, Exhibit "7". There are features on the face of Exhibit "3" which subjects the document to question. First, it does not bear the date when it was filed. Second, it shows that it was subscribed by the applicant on the same day that it was approved by the approving officer. Something must be said about the efficiency of the Regional Office. Maybe they are too efficient. But if they are, how come that there is no record of the temporary license in the FEO! [47]

The trial court gave no probative value to the alleged temporary license issued to the accused. Thus:

The temporary license of the accused was supposed to have been issued by the Regional Commander pursuant to Presidential Emergency Memorandum order No. 6 dated January 4, 1990 which provides: that "All Regional Commanders are now hereby authorized also to approve x x x applications to possess loose firearms surrendered during the loose firearm surrendering period (From 22 February 1990 to 24 March 1990). The firearm of the accused could not be covered by the Memorandum order because the accused did not surrender his firearm during the surrendering period. This is what he said.

Q

When you went to Tuguegarao, Cagayan to file your application in June of 1990, you brought with you the firearm. Is that correct?

A

No, sir.

Q

Did you return at Tuguegarao, Cagayan where you filed your application at anytime of June, 1990 bringing you that gun?

Q You mean you never presented the gun, subject of the application, to the office when you filed your application?

A No, sir.

ARGUMENTS

Q So when you filed your application and up to the time your application was granted, you were keeping the gun in your house?

A When I filed my application they only took the bullet and the serial number, sir.

Q Yes, the firearm was kept in your house?

A We fired it and got the slug, sir.

Q I want a categorical answer. From the time you applied, you filed your application up to the time it was granted, the gun was all the time in your house? Is that the fact?

A Yes, sir. (T.s.n. Hearing on October 29, 1993, Pages 21-23)

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A Yes, sir. (T.s.n. Hearing on October 29, 1993, Pages 21-23)

Of course the accused should not be faulted if he was able to cajole the Regional Commander into issuing him a license no matter how illegal it might be. This only goes into the integrity of the police officer who allowed himself to be used in consideration of whatever it was that facilitated the illegal issuance of the license. But while the accused should not be faulted in trying to save his neck by belatedly producing a temporary license, it does not change the fact that the temporary license was issued illegally after he shot and killed Jojo Lim Jr. with the gun. The records of the case shows that the accused was originally charged only of murder on October 8, 1990. On November 22, 1990 the police prosecutors filed a motion to amend the complaint to change the crime charged to violation of P.D. 1866 because after verification they found out that the accused was not a licensed firearm holder. If the Regional Office of the Civil Security Force at Camp Adduru, Cagayan, had in their records the temporary license applied for and issued to the accused, the police investigators should very easily have found it.

The accused himself did not even say that he has a temporary license issued to him by the Regional Commander at the time when he opposed the admission of the amended complaint. If he had a temporary license at that time he should have immediately produced it! In its resolution after the preliminary investigation the Municipal Trial Court held:

There is no question that the firearm used in shooting Jojo Lim is not licensed or registered per certification of the Firearm and Explosives Unit. If Ricardo Tobias had any license to possess the said firearm he could have easily submitted to Court his license or a true copy thereof. But until this time, Ricardo Tobias has remained silent despite the fact that there are three prominent lawyers who appeared for him. His silence only means that he is not authorized to possess that firearm. [48]

The accused filed his notice of appeal, [49] and we accepted his appeal on 27 June 1994.

After the withdrawal of his counsel de parte, the accused requested that we appoint a counsel de oficio for him; and we appointed Atty. Ariel Salvador Magno as such counsel. Thereafter, the accused, through his counsel de oficio, filed a 56-page Appellant's Brief wherein he sought a reversal of his conviction on the ground that the trial

court gravely erred: (1) in finding him guilty beyond reasonable doubt of the crime of qualified illegal possession of firearm; and (2) in ordering him to pay Clarita Lim damages.

As regards the first assigned error, the accused maintains that the prosecution failed to prove the elements of illegal possession of firearm aggravated by murder under P.D. No. 1866. On the contrary, he was able to present evidence, both oral and testimonial, that he was legally authorized to possess the subject firearm.

It is settled that the lack or absence of a license is an essential ingredient of the crime of illegal possession of firearm which the prosecution must prove. [50] There is no dispute that the accused had an array of documentary evidence to refute the prosecution's evidence that he had no license to possess the gun he used in killing Jojo Lim. However, just like the trial court, we are not impressed or persuaded by the documents. The conclusion that the accused's so-called temporary license and permit to carry a firearm outside his residence were obtained after the commission of the crime is irresistible.

A history of the firearm in question must first be considered to fully appreciate this conclusion.

According to the accused, the firearm originally belonged to his father, who died in 1977. His father did not obtain a license to possess the firearm. It was therefore a loose firearm. Long after his father's death, his mother gave the firearm to him (accused). Then in June of 1990, he filed in Tuguegarao an application for a license to possess the firearm (Exhibit"3"). The firearm was not, however, brought to Tuguegarao; it was kept in his house in Santiago, Isabela, and for purposes of the application only the bullet and the serial number were taken. The transcripts of the stenographic notes of the accused's testimony on cross-examination reveal the following:

PROSECUTOR AQUINO:

ON CROSS-EXAMINATION

Q

How did you acquire ownership of the gun covered by those licenses you presented?

A

I inherited it from my father, sir.

Q

So your father had a previous license to it?

A

None, sir.

Q

And when did you actually inherit that firearm from your father?

A

When my father died, my mother gave it to me, sir.

Q

May we know the date, Mr. Witness?

A

I cannot remember, sir.

Q What about the year when your mother gave you the gun?

ATTY. PURUGGANAN:

He said he could not remember.

COURT:

I will allow.

WITNESS ANSWER.

A I cannot remember, sir.

Q When did your father die, anyway?

A 1977, sir.

Q How long after your father died that your mother gave you that gun?

A It was long after my father died that my mother actually gave me the gun, sir.

Q You said you filed your application for license of that firearm in June, the month was June, what was the year?

A 1990, sir.

Q Are you very sure, Mr. Witness that this is the said application you filed in June of 1990 at Tuguegarao, Cagayan? I am showing to you Exhibit "3."

ATTY. PURUGGANAN:

Maybe the best evidence would be the document itself, your Honor.

PROSECUTOR AQUINO:

There is no date that's why I am asking, your Honor.

COURT: I will allow.

A Yes, sir.

Q What made you so sure that it was in the month of June considering that this application does not bear the year 1990?

A That was the month that I could remember, sir.

Q So you did not file it earlier than June 1990?

A Yes, sir.

Q If you really filed it on June 1990, how come that the jurat appears to have been executed in September, 1990?

ATTY. PURUGGANAN:

The best evidence is the document itself and if the jurat was not placed by the accused how would he know if it was notarized in September, 1990 or what ever date was it?

PROSECUTOR AQUINO:

I will just change the question, your Honor.

Q The entries here are mostly handwritten particularly the name, the address, the birthplace up to this portion of the jurat which mentions the date, 21st September 1990 with Residence Certificate No. 151244, Santiago, Isabela. My question is, whose handwritings are these?

ATTY. PURUGGANAN: We will notice that September 21 is written differently, your Honor.

PROSECUTOR AQUINO:

That's why I am asking.

Q So, when this entry which I read, "21st September, 1990," is placed in this application, you are [sic] no longer present?

A My handwriting is only up to this point (witness indicating that entry number 13, referring the signature of applicant).

ATTY. PURUGGANAN:

Well, your Honor, he is incompetent.

COURT:

I will allow.

WITNESS ANSWER:

A I am [sic] not present, sir.

Q When you went to Tuguegarao, Cagayan to file your application in June 1990, you brought with you the firearm. Is that correct?

A No, sir.

Q Did you return to Tuguegarao, Cagayan where you filed your application at anytime of June, 1990 bringing you that gun?

A No, sir.

Q You mean you never presented the gun, subject of the application, to the office when you filed your application?

A No, sir.

Q So when you filed your application and up to the time your application was granted, you were keeping the gun in your house?

A When I filed my application they only took the bullet and the serial number, sir.

Q Yes, the firearm was kept in your house?

A We fired it and got the slug, sir.

Q I want a categorical answer. From the time you applied, you filed your application up to the time it was granted, the gun was all the time in your house? Is that the fact?

A Yes, sir.

Q You said it was fired. It was fired in Santiago and the bullet was brought in Tuguegarao?

A Yes, sir.

Q When you went there in June, 1990 to file your application, did you bring with you the bullet?

ATTY. PURUGGANAN:

Your Honor, we have to make an objection on the ground that the answer of the witness might incriminate him.

COURT: Not on this point because this is covering June, so, I will allow that.

WITNESS ANSWER.

A Not yet, sir. [51]

The foregoing conclusively proved that from the time the unlicensed firearm was allegedly given to him by his mother until the incident in question, the accused was in possession of the firearm. He never surrendered the firearm during the “loose firearm surrendering period” from 22 February 1990 to 24 March 1990 pursuant to the National Emergency Memorandum order (NEMO) No. 6 of the President of 4 January 1990 and the Department of National Defense (DND) Department order No. A-04 of 18 January 1990.

Section 3 of NEMO No. 6 required the physical surrender of a loose firearm. It pertinently provided:

3. Any person who possesses any armament, firearm, ammunition or explosives or explosives ingredients or equipage without any license or permit as prescribed by law may, without incurring any criminal liability therefor, surrender the same to the Chief of Constabulary/Director General, Integrated National Police through the Commanding officer of the Firearms and Explosives Unit in Camp Crame, Quezon City for those in Metropolitan Manila and through the PC/INP Provincial Commanders for those outside Metropolitan Manila within a period of one (1) month from the date of the effectivity of this Memorandum order: Provided, That the foregoing provisions shall not be construed as barring the prosecution of any person for illegal possession of armament, firearms, ammunition or explosives, or explosives ingredients, as the case may be, in violation of existing laws who within the above-mentioned period of one (1) month:

(a) Carries outside of his residence any loose or unlicensed ... firearm ... unless it is for the purpose of surrendering the same, as evidenced by a written authority to transport the same for the aforesaid purpose priorly secured by him from the proper authorities designated by the Chief of Constabulary/Director General, INP;... (underscoring supplied for emphasis)

DND Department Order No. A-04, which implemented NEMO No. 6, was also unequivocal on the requirement of physical surrender of the loose firearm and provided for the issuance of Safe Transit Passes to those who were to surrender the firearm. Sections 17 and 18 thereof read as follows:

SEC. 17. Period of Surrender. - - Any person who possesses any armament, firearm, ammunition, explosives, explosives ingredients or military equipage and the like without any license or permit as prescribed by law shall, without incurring any criminal liability therefor, surrender the same within thirty (30) days counted two (2) weeks after the effective date of this Order.

SEC. 18. Where Surrender shall be Made; Procedure. - -

a. For those residing in Metro Manila Area, the surrender shall be made to the FEU, HPC, Camp Crame, Quezon City, or Capital Regional Command (CAPCOM), Camp Bagong Diwa, Bicutan, Tagig, Metro Manila, or its Sector Commands; or National Capital Region Defense Command, Camp Aguinaldo, Quezon city. For those residing outside Metro Manila Area, the surrender shall be made to the AFP Area Commands, PC Regional Commands, or PC/INP Provincial Commands/METRODISCOMs.

b. Residents of Metro Manila shall secure from any of the NCR Action Units mentioned in Section 5 hereof Safe Transit Passes for the transport of the armament, firearm/ammunition/explosives or other items from their residence or other places where they are being kept to any of the units mentioned in the preceding subsection. Those residing outside Metro Manila shall procure Safe Transit Passes from any of other Regions Action Units mentioned in Section 5 hereof.

c. Action Units shall issue "Safe Transit Passes" (Annex B) to any interested person effective for a definite period but not more than seventy two (72) hours from the time of issuance in order that they will not incur any criminal liability for illegal possession of the items as well as to ensure safe and unimpeded delivery thereof.

d. Armaments and firearms shall be partly dismantled and tightly bundled while ammunition, explosives and explosives ingredients shall be rendered safe to prevent accidents and unauthorized use. Military equipment shall be appropriately wrapped. All items to be surrendered shall be wrapped and labeled "FOR SURRENDER TO: [unit specified in preceding subsection (a)]. (underscoring supplied for emphasis)

Accordingly, Exhibit "12," which is the alleged receipt for the firearm, dated 24 March 1990 and purportedly signed by one Maj. Roberto C. Sacramento is a concoction and an obvious falsification, since the firearm was never surrendered and had remained in the accused's possession. In no way then can the loose firearm in question be licensed under NEMO No. 6 and DND Department order No. A-04.

Even conceding ex gratia that the accused had surrendered the firearm, no temporary license nor temporary permit to carry it could have been issued by anybody. As regards the licensing of surrendered unlicensed/loose firearms, only the following kinds of licenses could be issued pursuant to Section 30 of DND Department order No. A-04:

- a. Regular Licenses - - For private individuals, security agencies and business firms or entities for personally or privately-owned firearms.
- b. Special Permit - - For government officials and employees, including military personnel in the active service those in the retired list, AFP Reserve, officers on inactive status, and members, active or retired, of the Integrated National Police for personally-owned firearms.
- c. Certificate of Registration - - For government offices, units and entities, for government owned - firearms.

The obvious reason why no temporary license might be issued therefor is that the surrendered firearm should be stored or kept by the unit to which it was surrendered until it was disposed of in the manner provided for in Section 19 of DND Department order No. A-04.

The Temporary License which DND Department Order No. A-04 allowed was the TEMPORARY RE-REGISTERED FIREARM LICENSE which could be issued to holders of firearm licenses and permits to carry firearms outside of residence which were nullified effective midnight of 7 February 1990 and who sought the re-registration thereof pursuant to Sections 6, 7, 8, and 36 of the order, pertinent portions of which read as follows:

SEC. 6. Where Applications for Re-registration Filed. - -

SEC. 7. Requirements for Re-registration. - -

SEC. 8. Processing of Applications of Individual Licenses; Issuance of Temporary Re-registered Firearm Licenses. - -

- a. Those filed directly with FEU, HPC - -
- b. Those filed with Headquarters CAPCOM/MPF or CAPCOM Sector Commands. - -
- c. Those filed with PC provincial commands/METRODISCOMS - -

(1) Same procedure as prescribed in subsection (a) (1) above.

(2) After processing the application, the PC Provincial/METRODISCOM Commander shall forward the same including all supporting papers and the certificates of stenciling and test-firing, together with his comments/recommendations, to the PC Regional Commander concerned, who shall, after determining that the name of the applicant is actually reflected in the existing Master List of nullified licensed/registered firearms and that the applicant has all the qualifications and none of the disqualifications to continue processing the firearm,

immediately issue to the applicant a TEMPORARY RE-REGISTERED FIREARM LICENSE good for 120 days. The PC Provincial Command/METRODISCOM shall keep one (1) empty shell and slug and send the other two (2) empty shells and slugs to the Regional PCCL for ballistics examination, analysis and record purposes. Thereafter, the application together with all its supporting papers, shall be forwarded to the CO, FEU, HPC for issuance of a COMPUTERIZED RE-REGISTERED LICENSE.

SEC. 36. All existing firearm licenses and Permits to Carry Firearms Outside of Residence, to include Exemption Permits to the Firearm Ban, are nullified effective midnight of February 15, 1990, except those firearm licenses newly issued by the FEU from January 16, 1990 to February 15, 1990. Only until after the issuance of the TEMPORARY RE-REGISTERED LICENSE and its receipt by the licensees concerned shall the validity of previously issued permits to carry and exemption permits to the firearm ban automatically restored. Those without Permits to Carry Firearm Outside of Residence and/or Exemption Permits to the Firearms ban as of February 15, 1990 can only apply for same after they shall have received their computerized licenses.

This kind of Temporary License was allowed, because the firearm concerned was covered by a license revoked by NEMO No. 6 and the holder thereof was applying for its re-registration. The firearm remained, nevertheless, in his custody pursuant to Section 4 of DND Department order No. A-04. [52]

It follows then that the accused's Application for Firearm License (Exhibit "3") for the loose firearm in question could not be validly acted upon, because the firearm was never surrendered pursuant to NEMO No. 6 and DND Department order No. A-04. Maj. Roberto C. Sacramento, who allegedly administered the oath therein and recommended the approval of the application, knew all the time of the fatal infirmity of the application despite his issuance of the receipt, Exhibit "12." Howsoever viewed, the application was falsified, because it was primarily based on the assumption that the firearm sought to be licensed was a surrendered loose firearm, which was not.

Note that Maj. Sacramento's recommendation for a temporary license good for "180 days" pending "issuance" of the "computerized" license was a deliberate attempt to becloud the actual status of the firearm by making it appear that the firearm was previously registered or licensed, and that it was the subject of an application for re-registration under Section 8 of DND Department order No. A-04. This Section refers to the Temporary Re-registered Firearm License, good for 120 days, and the computerized Re-registered firearm license. This only compounded the falsification of the application.

Then, too, the accused's own Exhibit "4" - - "Masterlist of Registered Firearms Holder " for the months of December 1990, January, February, and March of 1991 issued on 17 July 1991 where his name appears in entry no. 51 (Exhibit "4-D") - - is an indisputable proof that he was not a registered firearms holder prior to December 1990.

Neither can the accused's alleged Permit to Carry Firearm outside Residence (Exhibit "7") purportedly issued on 21 September 1990 by Col. Miguel Fontanilla be of any help to the accused, since his application for a license was falsified and the Regional Commander had no authority to approve the application, much less issue a temporary license.

We thus agree with the trial court in its observation that the accused "was able to cajole the Regional Commander into issuing him a license no matter how illegal it might be" and in its justified doubts on the integrity of the police officer "who allowed himself to be used in consideration of whatever it was that facilitated the illegal issuance of the license." A stronger action is thus called for against all the police officers who helped the accused procure the alleged temporary license to possess his loose unsurrendered firearm and his alleged permit to carry it outside of his residence.

Just like the trial court, we are convinced beyond any shadow of doubt that as of 5 October 1990, the accused did not have a license, temporary or regular, to possess the firearm he used in killing Jojo Lim.

Since the fact of illegal possession of a firearm has been sufficiently established, we must next determine whether the accused employed the said firearm to commit murder. The accused does not deny killing Jojo Lim. In fact, before he was arrested or brought into police custody, he was asked by deputy Chief of Police Turingan why he was holding a gun, and the accused replied that he had shot Lim. [53] As that disclosure was made before the accused's arrest, the constitutionally guaranteed rights of the accused did not yet come into operation, and the accused's statement becomes a confession as defined by the Rules of Evidence, which is admissible against the accused. [54]

Through the testimony of Tom Taguinod, however, the accused implies that the killing was made in self-defense or defense of a stranger. The defense's version is that the accused was the one being manhandled by Jojo Lim while the latter was wielding a hand grenade. The problem with this scenario is that, according to Taguinod, the accused is taller and more heavily built than Jojo Lim, [55] making the situation proposed by the defense improbable. It would have been doubly difficult for Jojo Lim to wrestle the accused if he were as drunk as the defense would have us believe. Complicating matters for the accused is the fact that no hand grenade was found at the crime scene. [56] Moreover, Taguinod testified that Jojo Lim had removed the metal ring from the grenade; [57] thus, it was liable to explode at any moment. About fifteen to twenty minutes had elapsed from the time Jojo Lim removed the grenade's pin up to the time he was brought aboard the police car, [58] yet there was no explosion.

Assuming that the circumstances were such as the accused would have us believe, he still can not raise self-defense nor defense of a stranger in his favor. By availing of these defenses, the accused owns up to the killing, and the burden of evidence to show that the slaying was justified is now on his shoulders [59] (and at any rate, the accused had already confessed to Deputy Chief Turingan that he had shot Jojo Lim). The requisites of self-defense are (1) unlawful aggression, (2) reasonable necessity of the means employed to repel or prevent it, and (3) lack of sufficient provocation on the part of the person defending himself. [60] Defense of a stranger, meanwhile, requires the first two requisites of self-defense and that the person defending be not induced by revenge, resentment or other evil motive. [61]

At the time the accused shot Jojo Lim, the aggression against him had already ceased, as Jojo Lim was then pursuing Gerry Giron. Thus, there can be no self-defense in this case. Assuming that Jojo Lim's chasing Giron constituted aggression, the killing nevertheless lacks the second requisite of defense of a stranger, i.e., that there was a reasonable necessity for the means employed to repel or prevent the aggression. After the accused's first shot, Jojo Lim stumbled and desisted from chasing Giron, preventing any further aggression. But the accused seemed unsatisfied, for while Jojo Lim was helplessly lying down, the former shot him again, not once nor twice, but four times, and at a distance of merely two meters. It was overkill for the accused to again shoot the victim, and this circumstance belies any reasonable necessity of the means employed by the accused to prevent or repel aggression from the victim.

Treachery is present in this case, as there was a sudden attack against an unarmed victim. [62] That the attack was preceded by a scuffle, as pointed out by the accused, is of no moment, since treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. [63] In the case at bench, the scuffle between Jojo Lim and the accused had already ended; Jojo Lim was chasing Giron, his attention was turned towards the latter, and his back was against the accused. Thus, the accused's shots were a complete surprise to Jojo Lim, and he could neither defend himself nor retaliate against the assault.

The trial court thus committed no error in finding the accused guilty of the crime charged. However, it erred in imposing the penalty of life imprisonment. The penalty imposed in Section 1 of P.D. No. 1866 [64] for illegal possession of firearms if homicide or murder is committed with the use of such unlicensed firearm is death. At the time the accused committed the crime, the death penalty could not be imposed in view of the prohibition under Section 19(1), Article III of the Constitution. The penalty next lower in degree, which is reclusion perpetua, [65] should be imposed. Reclusion perpetua is not synonymous with life imprisonment. [66] Hence, the trial court should have imposed the penalty of reclusion perpetua and not life imprisonment.

Finally, we agree with the accused that the trial court erred in awarding damages and death indemnity to the victim's widow. The said award must be deleted, for although death had taken place, the offense charged is illegal possession of firearm and the killing merely aggravated it. No private interest is involved in the offense. The civil liability arising from death may be the subject of a separate civil action or impliedly instituted with the criminal action for murder. [67] It is settled that one who kills another with the use of an unlicensed firearm commits two separate offenses of either homicide or murder under the Revised Penal Code and aggravated illegal possession of firearm under the second paragraph of Section 1 of P.D. No. 1866. [68]

WHEREFORE, the instant appeal is DISMISSED. The challenged decision of Branch 21 of the Regional Trial Court of Santiago, Isabela, in Criminal Case No. 0920, finding accused RICARDO TOBIAS @ "Ding" GUILTY beyond reasonable doubt of the crime of unlawful possession of firearm aggravated by murder is hereby AFFIRMED with modifications consisting of the change of the penalty from life imprisonment to reclusion perpetua and the deletion of the awards of actual and moral damages and death indemnity in favor of the victim's widow, Clarita Lim.

The Provincial Prosecutor of Isabela is hereby directed to institute against the accused a criminal action for the crime of murder, if none has yet been made; and to initiate appropriate proceedings against Maj. Roberto C. Sacramento and Col. Miguel Fontanilla to determine their criminal liability in connection with the issuance to the accused of a temporary license to possess a loose and unsurrendered firearm and a temporary permit to carry it outside the residence, and to prosecute them accordingly if such be warranted by the evidence.

The Director General of the Philippine National Police is also directed to investigate forthwith Maj. Roberto C. Sacramento and Col. Miguel Fontanilla to determine their administrative liability for their aforementioned acts.

Copies of this decision shall be furnished the Provincial Prosecutor of Isabela and the Director General of the Philippine National Police, who are hereby also directed to submit to this Court a report on the matter each is required to do as aforementioned within sixty (60) days from notice of the decision.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), 1.

[2] Id., 46.

[3] Id., 51.

[4] Exhibit "J"; Id., 49.

[5] Id., 52.

[6] Id., 73.

[7] Id., 57-59.

[8] OR, 86.

[9] Id., 87.

[10] Id., 90.

[11] Id., 116.

[12] Id., 97-98.

[13] Id., 116.

[14] Id., 122.

[15] Id., 125.

[16] OR, 128.

[17] TSN, 18 February 1991, 2-124 (taken before Branch 18 of the Isabela RTC).

[18] TSN, 31 October 1991, 6-24; TSN, 22 April 1992, 2-14.

[19] TSN, 26 May 1992, 6-21.

[20] Susana heard three gunshots; Id., 10.

[21] TSN, 18 March 1992, 8-14, 23-25.

[22] TSN, 10 June 1992, 22.

[23] Exhibits "I-2" to "I-4."

[24] TSN, 10 June 1992, 12-15.

[25] TSN, 14 August 1992, 17-18.

[26] Exhibits "I-5" to "I-7."

[27] TSN, 14 August 1992, 11-12.

[28] Exhibits "I-8" and "I-9. "

[29] Exhibit "I-10. "

[30] TSN, 10 June 1992, 16-22.

[31] OR, 448; Rollo, 45.

[32] TSN, 21 August 1992, 3-13.

[33] TSN, 21 August 1992, 14-19.

[34] TSN, 21 January 1993, 5-9.

[35] TSN, 2 February 1993, 5-10.

[36] *Id.*, 11-18.

[37] TSN, 2 February 1993, 19-30.

[38] TSN, 29 October 1993, 3-23.

[39] TSN, 15 January 1993, 9-54.

[40] Neither his testimony nor his "Patrol order" (Exhibit "9") indicates to which PNP office he is assigned.

[41] TSN, 27 January 1993, 3-29.

[42] Exhibit "15."

[43] TSN, 12 April 1993, 4-27.

[44] OR, 432-449; Rollo, 29-46. Per Judge Fe Albano Madrid.

[45] *Id.*, 443; *Id.*, 40.

[46] OR, 445; Rollo, 42.

[47] *Id.*, 445-446; *Id.*, 42-43.

[48] OR, 446-448; Rollo, 43-45.

[49] *Id.*, 452; *Id.*, 47.

[50] *People v. Tiozon*, 198 SCRA 368, 385 [1991]; *People v. Ramos*, 222 SCRA 557, 576 [1993].

[51] TSN, 29 October 1993, 11-24.

[52] The said Section provides as follows:

SEC. 4. Safe Transit Passes. - Applicants for re-registration shall secure Safe Transit Passes (Annex B) from any of the Action Units authorized in Section 5 hereof to enable them to bring, without criminal liability, their firearms for stenciling and ballistics test to the PC units mentioned in Section 6 hereof and thereafter to bring back home their re-registered firearms. Licensed/registered firearm holders are not required to surrender/turn-in their firearms to the Philippine Constabulary for safekeeping and custody.

[53] TSN, 18 March 1992, 11.

[54] Section 33, Rule 130, Rules of Court.

[55] TSN, 15 February 1993, 8.

[56] TSN, 18 March 1992, 25.

[57] TSN, 2 February 1993, 15-18.

[58] TSN, 15 February 1993, 36.

[59] *People v. Gutual*, G.R. No. 115233, 22 February 1996, 9.

[60] Article 11(1), Revised Penal Code.

[61] Article 11(3), *Id.*

[62] *People v. Manlusoc*, G.R. No. 116600, 3 July 1996, 26.

[63] *Id.*, 25.

[64] Entitled "An Act 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."

[65] Article 25, Revised Penal Code. See also Section 19(1), Article III, Constitution.

[66] *People v. de la Cruz*, 217 SCRA 283, 296-297 [1993]; *People v. Basay*, 219 SCRA 404, 425 [1993] *People v. Lascuna*, 225 SCRA 386, 405 [1993].

[67] *People v. Deunida*, 231 SCRA 520, 535 [1994].

[68] *People v. Tac-an*, 182 SCRA 601, 615-616 [1990]; *People v. Tiozon*, *supra* note 50, at 379-380; *People v. Caling*, 208 SCRA 821, 826-827 [1992]; *People v. Jumamoy*, 221 SCRA 333, 347 [1993]; *People v. Deunida*, *supra* note 67, at 530; *People v. Fernandez*, 239 SCRA 174, 182 [1994]; *People v. Somooc*, 244 SCRA 731, 738 [1995]; *People v. Quijada*, G.R. Nos. 115008-09, 24 July 1996, 14-15.

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