PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERT DORIMON, ACCUSED-APPELLANT.

G.R. No. 114267. December 17, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated January 24, 1994, of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, in Criminal Case No. S-2180 convicting accused-appellant Gilbert Dorimon[1] of Presidential Decree No. 1866,[2] sentencing him to reclusion perpetua, and ordering the forfeiture of his .22 caliber paltik revolver in favor of the government.

At the time of the incident, appellant was an eighteen (18) year-old senior high school student at the Salug National High School of Salug, Zamboanga del Norte. Found in his possession was a .22 cal. paltik, that he allegedly used to threaten a classmate who had defeated him in a basketball game at school.[3]

The pertinent facts are as follows:

On August 7, 1992, at around 9:30 A.M., Esnani Bontigao, a high school student, personally reported to the Chief of Police of the Philippine National Police (PNP), Salug, Zamboanga del Norte, that appellant had threatened him with a gun.[4] Acting on the information, the Chief of Police dispatched a team composed of SPO3 Marcelino Tamala, SPO2 Ernesto Lagare and SPO3 Malik Sapihi to proceed to the store near the school to apprehend appellant. Upon reaching the store, SPO3 Tamala approached appellant whom he knew since the latter was a relative of his wife, and asked him whether he was carrying a gun.[5] Appellant answered in the affirmative but explained that he only found the gun at the back of the school.[6] Thereafter, appellant was brought to the police station where SPO3 Sapihi discovered a .22 cal. paltik revolver, which fell from appellant's waist when appellant was frisked.[7]

On August 10, 1992, the Chief of Police of Salug, Zamboanga del Norte filed a Complaint[8]for Illegal Possession with the Municipal Circuit Trial Court of Salug-Godod, Salug, Zamboanga del Norte against appellant.

On August 24, 1992, after conducting the preliminary investigation, Municipal Circuit Trial Judge Ig H. Aricheta issued a Resolution,[9] which found a prima facie case for Illegal Possession, fixed the bail at P200,000.00, and ordered the records of the case forwarded to the Office of the Provincial Prosecutor.

On September 16, 1992, Second Assistant Provincial Prosecutor Valeriano B. Lagula affirmed the aforesaid Resolution but lowered the recommended bail to P50,000.00.[10]

On October 8, 1992, Provincial Prosecutor Rodolfo T. Mata filed the following Information[11] for Illegal Possession of Firearm with the Regional Trial Court:

> "The undersigned, Provincial Prosecutor, accuses GILBERT DORIMON of the crime of ILLEGAL POSSESSION OF FIREARM, committed as follows:

> That, in the morning, on or about the 7th day of August, 1992, in the Municipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control one revolver caliber 22 homemade (paltic), bring and carry it outside his residence without the necessary license or permit from the proper authorities and neither is he exempted from liability for carrying said firearm outside his residence.
>
> CONTRARY TO LAW. (Violation of P.D. 1866).
>
> Dipolog City (for Sindanganan, Zamboanga del Norte)."

On May 5, 1993, upon arraignment, appellant, duly assisted by counsel de parte Atty. Reubin Maraon, entered a plea of not guilty.

During trial, the prosecution presented two of the arresting officers as its witnesses, namely, SPO3 Marcelino Tamala and SPO2 Ernesto Lagare. Both identified the .22 cal. paltik revolver ("Exhibit "A") recovered from appellant.[12]

Appellant testified on his behalf and denied the charges. He testified that on August 7, 1992, at about 9:00 o' clock in the morning, he was in a store in front of his school when three (3) policemen whom he identified as SPO3 Tamala, SPO2 Lagare and SPO3 Sapihi, approached him.[13] SPO2 Lagare told him that they wanted to bring him to the Office of the Chief of Police. He was not shown any warrant of arrest nor search warrant. He stood up to enter the school campus but SPO3 Sapihi aimed his armalite at him so that he was forced to go with them to the Office of the Station Commander. At the Office of the Station Commander, SPO3 Tamala searched his body but recovered nothing from him. He denied any knowledge of the firearm presented as Exhibit "A".[14]

On January 28, 1994, the trial court rendered a decision[15] convicting appellant of the crime charged. The dispositive portion of the decision reads:

> "WHEREFORE, the Court finds accused, Gilbert Dorimon, guilty beyond reasonable doubt of the crime of "Illegal Possession of Firearm," punishable under Section 1 of P.D. 1866, hereby sentences him the penalty of Reclusion Perpetua. Exh. "A" forfeited in favor of the Government."
>
> Hence, the present appeal.
>
> In his Brief, appellant assigns the sole error that:[16]
>
> THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME AS CHARGED IN THE INFORMATION DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Additionally, appellant contends that even granting that he possessed the firearm, his arrest without a warrant violated his constitutional right against unlawful searches and seizures, and as a result, the evidence obtained in violation thereof should be inadmissible for any purpose. Appellant insists that before he was picked up by the policemen, they should have first secured a warrant of arrest or search warrant. The arrest being unlawful, the subsequent search on the body of appellant should also be held unlawful.

The Office of the Solicitor General maintains, however, that appellant was arrested with the firearm in flagrante delicto; when asked whether he had a firearm, he admitted that he possessed one, which he found at the back of the school.[17] Hence, the warrantless arrest and the incidental search on his body were both valid.

According to the OSG, mere possession of the firearm consummated the crime under P.D. 1866. Although appellant denied ownership of the gun, what is essential for purposes of illegal possession is control or dominion over the use of the weapon of the holder. Absent any ill motive on the part of the police officers in testifying

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against appellant, their testimonies are entitled to full faith and credit.

As to the sufficiency of evidence to convict, however, we are constrained by the factual circumstances in this case to differ from the OSG's contention that all the elements of the crime of illegal possession were duly proven.

In cases involving illegal possession of firearm, the requisite elements are: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess.[18]

The first requisite is beyond dispute as the subject firearm was recovered from the person of accused, identified in court as the same firearm, and offered in evidence during trial.

As to the second requisite, we have held that the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosives Unit that appellant was not a licensee of the said firearm would suffice to prove beyond reasonable doubt the second element of the crime of illegal possession.[19] The non-possession of a license is a negative fact, which constitutes an essential ingredient of the offense of illegal possession, and it is the duty of the prosecution not only to allege it but also to prove it beyond reasonable doubt.[20]

In this case, while the Information alleged that the appellant did not possess any license or permit to carry, such fact was not established during trial. The only reference to the non-possession of a license or permit of the appellant was when the trial judge propounded clarificatory questions to SPO3 Tamala and SPO2 Lagare in this wise:

> COURT TO SPO3 MARCELINO TAMALA
>
> Q: And at the time when the firearm was recovered in the possession of the herein accused he was not able to present any permit to carry?
>
> A: No, sir.[21]
>
> x x x
>
> COURT TO SPO2 ERNESTO LAGARE
>
> Q: Do you mean to say actually Sapihi did not recover said firearm because it fall? (sic)
>
> A: At the time Sapihi pulled up the T-shirt that was the time the firearm fall. In the act of raising the shirt the firearm fall down. (sic)
>
> Q:
>
> And the firearm dropped from the waist line of the herein accused?

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A: Yes, sir.

Q: And the accused fails to show that he has an authority? (sic)

A: Yes, sir.

Q: And he is not a member of Bantay-dagat or bantay-bayan?

A: No, sir.[22]

We find the above clarificatory questions, in the absence of any other testimonial or documentary evidence, insufficient to prove the essential element of non-possession of the necessary license or permit. It does not appear that SPO3 Tamala and SPO2 Lagare are duly authorized representatives of the PNP Firearms and Explosives Unit, and neither was a certificate from said office presented in evidence. While no license or permit may be issued for a "paltik", we have already ruled that this mere fact alone does not dispense with proof that it is unlicensed.[23] Indeed, the prosecution failed to present this vital piece of evidence and the trial court overlooked such requirement and proceeded to convict the accused.

While it is true that the appellant did not raise the issue of failure of the prosecution to prove his non-possession of a license to possess a firearm, the rule is well-settled that in a criminal case, an appeal to the Court throws the whole case open for review, and it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of error or not.[24] Moreover, well established is the principle that conviction of a person for an alleged offense should not rest on the weakness of the defense but on the strength of the prosecution's evidence. Accordingly, in this case it is proper for the Court to consider in favor of appellant the absence of proof of one element in the charge of illegal possession of firearm, that is, the certificate from the PNP Firearms and Explosive Unit that he had no license or permit to possess it.

WHEREFORE, for insufficiency of evidence to prove the guilt of the accused beyond reasonable doubt, the decision of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, in Criminal Case No. S-2180 is REVERSED and SET ASIDE. Accused-appellant Gilbert Dorimon is hereby ACQUITTED of the charge of Illegal Possession of Firearm. He is ordered RELEASED immediately unless there are other legal grounds for his continued detention.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] The Information, Records, and Decision did not indicate his middle name.1 for violation of Section

[2] "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." P.D. No. 1866 has already been amended by Republic Act No. 8294, which took effect on July 6, 1997; Pastrano v. Court of Appeals, 281 SCRA 287, 296 (1997).

[3] Sworn Statement of Esnani Bontigao, Records, p. 3; Records of Preliminary Examination, Records, p. 5.

[4] TSN, July 14, 1993, pp. 3-4, 11.

[5] Ibid.

[6] Id. at 4, 14.

[7] Id. at 4.

[8] Records, p. 1.

[9] Id. at 16-17.

[10] Id. at 20-22.

[11] Id. at 23.

[12] TSN, July 14, 1993, pp. 5, 14-15.

[13] TSN, November 17, 1993, p. 3-4.

[14] Id. at 4-5.

[15] Records, p. 70.

[16] Rollo, p. 30.

[17] TSN, July 14, 1993, p. 4.

[18] People v. Bansil, G.R. No.120163, March 10, 1999, p. 11; Gonzales v. Court of Appeals, 277 SCRA 518, 525 (1997); People v. Lualhati, 234 SCRA 325, 332 (1994).

[19] People v. Narvasa, G.R. No. 128618, November 16, 1998, p. 16; People v. Villanueva, 275 SCRA 489, 496 (1997); Mallari v. Court of Appeals, 265 SCRA 456, 465 (1996).

[20] People v. Villanueva, 275 SCRA 489, 495 (1997).

[21] TSN, July 14, 1993, p. 9.

[22] Id. at 16.

[23] Mallari v. Court of Appeals, 265 SCRA 456, 465 (1996); People v. Evangelista, 256 SCRA 611, 627-628 (1996); People v. Ramos, 222 SCRA 557, 578 (1993).

[24] People v. Tiozon, 198 SCRA 368, 387 (1991); People v. Borbano, 76 Phil. 702, 708 (945) People v. Olfindo, 47 Phil. 1, 5 (1924).

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