

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO SOLAYAO ACCUSED-APPELLANT.*G.R. No. 119220. September 20, 1996*

Ponente: ROMERO, J.

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Accused-appellant Nilo Solayao was charged before the Regional Trial Court of Naval, Biliran, Branch 16, with the crime of illegal possession of firearm and ammunition[1] defined and penalized under Presidential Decree No. 1866.

The lone prosecution witness, SPO3 Jose Niño, narrated that at about 9:00 o'clock in the evening of July 9, 1992, with CAFGU members Teofilo Llorad, Jr. and Cecilio Cenining, he went to Barangay Caulangohan, Caibiran, Biliran. They were to conduct an intelligence patrol as required of them by their intelligence officer to verify reports on the presence of armed persons roaming around the barangays of Caibiran.[2]

From Barangay Caulangohan, the team of Police Officer Niño proceeded to Barangay Onion where they met the group of accused-appellant Nilo Solayao numbering five. The former became suspicious when they observed that the latter were drunk and that accused-appellant himself was wearing a camouflage uniform or a jungle suit. Accused-appellant's companions, upon seeing the government agents, fled.[3]

Police Officer Niño told accused-appellant not to run away and introduced himself as "PC," after which he seized the dried coconut leaves which the latter was carrying and found wrapped in it a 49-inch long homemade firearm locally known as "latong." When he asked accused-appellant who issued him a license to carry said firearm or whether he was connected with the military or any intelligence group, the latter answered that he had no permission to possess the same. Thereupon, SPO3 Niño confiscated the firearm and turned him over to the custody of the policeman of Caibiran who subsequently investigated him and charged him with illegal possession of firearm.[4]

Accused-appellant, in his defense, did not contest the confiscation of the shotgun but averred that this was only given to him by one of his companions, Hermogenes Cenining, when it was still wrapped in coconut leaves. He claimed that he was not aware that there was a shotgun concealed inside the coconut leaves since they were using the coconut leaves as a torch. He further claimed that this was the third torch handed to him after the others had been used up.[5] Accused-appellant's claim was corroborated by one Pedro Balano that he indeed received a torch from Hermogenes Cenining which turned out to be a shotgun wrapped in coconut leaves.[6]

On August 25, 1994, the trial court found accused-appellant guilty of illegal possession of firearm under Section 1 of Presidential Decree No. 1866 and imposed upon him the penalty of imprisonment ranging from reclusion temporal maximum to reclusion perpetua. The trial court, having found no mitigating but one aggravating circumstance of nighttime, sentenced accused-appellant to suffer the prison term of reclusion perpetua with the accessory penalties provided by law.[7] It found that accused-appellant did not contest the fact that SPO3 Nino confiscated the firearm from him and that he had no permit or license to possess the same. It hardly found credible

accused-appellant's submission that he was in possession of the firearm only by accident and that upon reaching Barangay Onion, he followed four persons, namely, Hermogenes Cenining, Antonio Sevillano, Willie Regir and Jovenito Jaro when he earlier claimed that he did not know his companions.[8]

Accused-appellant comes to this Court on appeal and assigns the following errors:

"I. The trial court erred in admitting in evidence the homemade firearm.

"II. The trial court erred in appreciating the aggravating circumstance of nighttime in the imposition of the maximum penalty against the accused-appellant."[9]

This Court, in the case of *People v. Lualhati*[10] ruled that in crimes involving illegal possession of firearm, 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.

In assigning the first error, accused-appellant argued that the trial court erred in admitting the subject firearm in evidence as it was the product of an unlawful warrantless search. He maintained that the search made on his person violated his constitutional right to be secure in his person and effects against unreasonable searches and seizures. Not only was the search made without a warrant but it did not fall under any of the circumstances enumerated under Section 5, Rule 113 of the 1985 Rules on Criminal Procedure which provides, *inter alia*:

"A peace officer or a private person may, without a warrant, arrest a person when in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense."

Hence, the search being unlawful, the homemade firearm confiscated from him is inadmissible in evidence for being "the fruit of the poisonous tree." [11] As such, the prosecution's case must necessarily fail and the accused-appellant acquitted.

Accused-appellant's arguments follow the line of reasoning in *People v. Cuizon, et al.*[12] where this Court declared: "... emphasis is to be laid on the fact that the law requires that the search be incident to a lawful arrest, in order that the search itself may likewise be considered legal. Therefore, it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Were a search first undertaken, then an arrest effected based on evidence produced by the search, both such search and arrest would be unlawful, for being contrary to law."

Under the circumstances obtaining in this case, however, accused-appellant's arguments are hardly tenable. He and his companions' drunken actuations aroused the suspicion of SPO3 Niño's group, as well as the fact that he himself was attired in a camouflage uniform or a jungle suit[13] and that upon spying the peace officers, his companions fled. It should be noted that the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming around the barangays of Caibiran.[14]

The circumstances in this case are similar to those obtaining in *Posadas v. Court of Appeals*[15] where this Court held that "at the time the peace officers identified themselves and apprehended the petitioner as he attempted to flee, they did not know that he had committed, or was actually committing the offense of illegal possession of firearm and ammunitions. They just suspected that he was hiding something in the buri bag. They did not know what its contents were. The said circumstances did not justify an arrest without a warrant."

This Court, nevertheless, ruled that the search and seizure in the *Posadas* case brought about by the suspicious conduct of *Posadas* himself can be likened to a "stop and frisk" situation. There was a probable cause to conduct a search even before an arrest could be made.

In the present case, after SPO3 Nino told accused-appellant not to run away, the former identified himself as a

government agent.[16] The peace officers did not know that he had committed, or was actually committing, the offense of illegal possession of firearm. Tasked with verifying the report that there were armed men roaming around in the barangays surrounding Caibiran, their attention was understandably drawn to the group that had aroused their suspicion. They could not have known that the object wrapped in coconut leaves which accused-appellant was carrying hid a firearm.

As with Posadas, the case at bar constitutes an instance where a search and seizure may be effected without first making an arrest. There was justifiable cause to "stop and frisk" accused-appellant when his companions fled upon seeing the government agents. Under the circumstances, the government agents could not possibly have procured a search warrant first.

Thus, there was no violation of the constitutional guarantee against unreasonable searches and seizures. Nor was there error on the part of the trial court when it admitted the homemade firearm as evidence.

As to the question of whether or not the prosecution was able to prove the second element, that is, the absence of a license or permit to possess the subject firearm, this Court agrees with the Office of the Solicitor General which pointed out that the prosecution failed to prove that accused-appellant lacked the necessary permit or license to possess the subject firearm.[17]

Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution. The absence of such license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm, and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt.[18]

In *People v. Tiozon*,[19] this Court said:

"It is true that *People vs. Lubo*, 101 Phil. 179 and *People vs. Ramos*, 8 SCRA 758 could be invoked to support the view that it is incumbent upon a person charged with illegal possession of a firearm to prove the issuance to him of a license to possess the firearm, but we are of the considered opinion that under the provisions of Section 2, Rule 131 of the Rules of Court which provide that in criminal cases the burden of proof as to the offense charged lies on the prosecution and that a negative fact alleged by the prosecution must be proven if 'it is an essential ingredient of the offense charged,' the burden of proof was with the prosecution in this case to prove that the firearm used by appellant in committing the offense charged was not properly licensed.

It cannot be denied that the lack or absence of a license is an essential ingredient of the offense of illegal possession of a firearm. The information filed against appellant in Criminal Case No. 3558 of the lower court (now G.R. No. 27681) specifically alleged that he had no 'license or permit to possess' the .45 caliber pistol mentioned therein. Thus it seems clear that it was the prosecution's duty not merely to allege that negative fact but to prove it. This view is supported by similar adjudicated cases. In *U.S. vs. Tria*, 17 Phil. 303, the accused was charged with 'having criminally inscribed himself as a voter knowing that he had none of the qualifications required to be a voter. It was there held that the negative fact of lack of qualification to be a voter was an essential element of the crime charged and should be proved by the prosecution. In another case (*People vs. Quebral*, 68 Phil. 564) where the accused was charged with illegal practice of medicine because he had diagnosed, treated and prescribed for certain diseases suffered by certain patients from whom he received monetary compensation, without having previously obtained the proper certificate of registration from the Board of Medical Examiners, as provided in Section 770 of the Administrative Code, this Court held that if the subject of the negative averment alike, for instance, the act of voting without the qualifications provided by law is an essential ingredient of the offense charged, the prosecution has the burden of proving the same, although in view of the difficulty of proving a negative allegation, the prosecution, under such circumstance, need only establish a prima facie case from the best evidence obtainable. In the case before Us, both appellant and the Solicitor General agree that there was not even a prima facie case upon which to hold appellant guilty

of the illegal possession of a firearm. Former Chief Justice Moran upholds this view as follows:

'The mere fact that the adverse party has the control of the better means of proof of the fact alleged, should not relieve the party making the averment of the burden of proving it. This is so, because a party who alleges a fact must be assumed to have acquired some knowledge thereof, otherwise he could not have alleged it. Familiar instance of this is the case of a person prosecuted for doing an act or carrying on a business, such as, the sale of liquor without a license. How could the prosecution aver the want of a license if it had acquired no knowledge of that fact? Accordingly, although proof of the existence or non-existence of such license can, with more facility, be adduced by the defendant, it is nevertheless, incumbent upon the party alleging the want of the license to prove the allegation. Naturally, as the subject matter of the averment is one which lies peculiarly within the control or knowledge of the accused prima facie evidence thereof on the part of the prosecution shall suffice to cast the onus upon him.' (6 Moran, Comments on the Rules of Court, 1963 edition, p. 8)."

Finally, the precedents cited above have been crystallized as the present governing case law on this question. As this Court summed up the doctrine in *People v. Macagaling*:^[20]

"We cannot see how the rule can be otherwise since it is the inescapable duty of the prosecution to prove all the ingredients of the offense as alleged against the accused in an information, which allegation must perforce include any negative element provided by the law to integrate that offense. We have reiterated quite recently the fundamental mandate that since the prosecution must allege all the elements of the offense charged, then it must prove by the requisite quantum of evidence all the elements it has thus alleged."

In the case at bar, the prosecution was only able to prove by testimonial evidence that accused-appellant admitted before Police Officer Niño at the time that he was accosted that he did not have any authority or license to carry the subject firearm when he was asked if he had one.^[21] In other words, the prosecution relied on accused-appellant's admission to prove the second element.

Is this admission sufficient to prove beyond reasonable doubt the second element of illegal possession of firearm which is that accused-appellant does not have the corresponding license? Corollary to the above question is whether an admission by the accused-appellant can take the place of any evidentiary means establishing beyond reasonable doubt the fact averred in the negative in the pleading and which forms an essential ingredient of the crime charged.

This Court answers both questions in the negative. By its very nature, an "admission is the mere acknowledgment of a fact or of circumstances from which guilt may be inferred, tending to incriminate the speaker, but not sufficient of itself to establish his guilt."^[22] In other words, it is a "statement by defendant of fact or facts pertinent to issues pending, in connection with proof of other facts or circumstances, to prove guilt, but which is, of itself, insufficient to authorize conviction."^[23] From the above principles, this Court can infer that an admission in criminal cases is insufficient to prove beyond reasonable doubt the commission of the crime charged.

Moreover, said admission is extra-judicial in nature. As such, it does not fall under Section 4 of Rule 129 of the Revised Rules of Court which states:

"An admission, verbal or written, made by a party in the course of the trial or other proceedings in the same case does not require proof."

Not being a judicial admission, said statement by accused-appellant does not prove beyond reasonable doubt the second element of illegal possession of firearm. It does not even establish a prima facie case. It merely bolsters the case for the prosecution but does not stand as proof of the fact of absence or lack of a license.

This Court agrees with the argument of the Solicitor General that "while the prosecution was able to establish the fact that the subject firearm was seized by the police from the possession of appellant, without the latter being

able to present any license or permit to possess the same, such fact alone is not conclusive proof that he was not lawfully authorized to carry such firearm. In other words, such fact does not relieve the prosecution from its duty to establish the lack of a license or permit to carry the firearm by clear and convincing evidence, like a certification from the government agency concerned." [24]

Putting it differently, "when a negative is averred in a pleading, or a plaintiff's case depends upon the establishment of a negative, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative." [25]

In this case, a certification from the Firearms and Explosives Unit of the Philippine National Police that accused-appellant was not a licensee of a firearm of any kind or caliber would have sufficed for the prosecution to prove beyond reasonable doubt the second element of the crime of illegal possession of firearm.

In view of the foregoing, this Court sees no need to discuss the second assigned error.

WHEREFORE, the assailed judgment of the court a quo is REVERSED and SET ASIDE. Accused-appellant Nilo Solayao is hereby ACQUITTED for insufficiency of evidence and ordered immediately released unless there are other legal grounds for his continued detention, with costs de oficio.

SO ORDERED.

Regalado, (Chairman), Puno, and Torres, Jr., JJ., concur.

Mendoza, J., on leave.

[1] Criminal Case No. N-1592.

[2] pp. 4-5, TSN, June 16, 1993.

[3] p. 5, supra.

[4] pp. 5-7, supra.

[5] pp. 32-33, TSN, April 20, 1994.

[6] p. 4, TSN, November 25, 1993.

[7] Decision penned by Judge Bonifacio Sanz Maceda, RTC-Br. 16, Naval, Biliran, p. 11, Rollo.

[8] Supra., p. 13, Rollo.

[9] pp. 43 and 46, Accused-appellant's Brief, Rollo.

[10] 234 SCRA 325 (1994) citing *People v. Damaso*, 212 SCRA 547 (1992).

[11] *People v. Cuizon, et al.*, G.R. No. 109287, April 18, 1996.

[12] Supra.

[13] p. 5, TSN, June 16, 1993.

[14] p. 4, supra.

[15] 188 SCRA 188 (1990).

[16] p. 5, TSN, June 16, 1993.

[17] p. 68, Plaintiff-appellee's Brief, Rollo.

[18] *People v. Arce*, 227 SCRA 406 (1993).

[19] 198 SCRA 368 (1991) citing *People v. Pajenado*, 31 SCRA 812 (1970).

[20] 237 SCRA 299 (1994).

[21] p. 7, TSN, June 16, 1993.

[22] R. Francisco, *Basic Evidence* 112.

[23] J. Sibal & J. Salazar, Jr., *Compendium on Evidence* 20, 4TH ed., 1995 citing *Commonwealth v. Elliot*, 292 Pa. 16, 140 A. 537, 538.

[24] p. 69, Plaintiff-appellee's Brief, Rollo.

[25] V. Francisco, *Evidence* 13 1973 ed. Citing 2 Jones on Evidence, sec. 494.

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