

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO2 RODEL SAMONTE, ACCUSED-APPELLANT.

G.R. No. 126048. September 29, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the decision dated May 13, 1996 of the Regional Trial Court, 5th Judicial Region, Branch 3, Legazpi City, finding accused-appellant Rodel Samonte guilty of Qualified Illegal Possession of Firearms under Presidential Decree No. 1866, thus:

“WHEREFORE, in view of all the foregoing considerations, this Court finds accused RODEL SAMONTE GUILTY beyond reasonable doubt of aggravated or qualified Illegal Possession of Firearms as defined and penalized under Section 1, Par. 2 of PD No. 1866 which pertinently reads: ‘If homicide or murder is committed with the use of an unlicensed firearms, the penalty of death shall be imposed.’ And hereby sentences him to suffer the DEATH PENALTY. However, by reason of Section 19(1), Article III of the 1987 Constitution which proscribes the imposition of the Death Penalty, the Death Penalty is hereby reduced to the next lower degree, or RECLUSION PERPETUA.

“This Court orders the forfeiture of the firearms, cal. .38 snub nose without serial number Exh. ‘F’, (paltik), with four (4) live ammunitions, and cal. .38 with serial # INP 1015903, Exh. ‘E’ with six (6) live ammunitions and other incidental paraphernalia Exhs. ‘J, K, & L’ found in the possession of the accused in favor of the Philippine National Police (PNP) to be disposed of in accordance with law.”[1]

The antecedents of the case are as follows:

On June 13, 1993, at about 1:00 AM, a shooting incident occurred along Rizal Street, Old Albay District, Legazpi City, resulting in the death of one Siegfred Perez.[2] Herein accused-appellant PO2 Rodel Samonte, a policeman detailed in the Mayors Office of Legazpi City, was one of the suspects in the fatal shooting of Perez. On June 15, 1993, Prosecution witnesses SPO4 Ruben Morales and Police Inspector Ricardo Gallardo confronted accused-appellant in the City Mayors Office and confiscated the latters service revolver. Thereupon, accused-appellant informed Inspector Gallardo that there is another revolver, a caliber .38 paltik in his house which he (Samonte) allegedly recovered from the culprit (apparently referring to Siegfred Perez) on June 13, 1993. Both firearms were submitted to the proper authorities for ballistic examination.[3]

The results showed that the caliber .38 slug recovered from the body of deceased Perez was indeed fired from the caliber .38 (paltik) homemade revolver, marked Smith and Wesson, without serial number.[4]

Lastly, prosecution witness Elmer Mabilin who chanced upon the above-mentioned firearms at the police station on June 15, 1993, identified both to be that of accused-appellant.[5]

Charges of Murder and Illegal Possession of Firearms were separately filed against accused-appellant. This case before us stemmed from the Information dated August 16, 1993, the accusatory portion of which reads:

That on or about the 13[th] day of June, 1993, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession an unlicensed .38 Caliber snub nose revolver (paltik) with four (4) live ammunitions, without first securing the necessary and requisite license or permit therefore (sic) from the proper authorities, which firearm was used in shooting SIEGFRED PEREZ resulting in the death of the latter.

CONTRARY TO LAW.[6]

Upon arraignment on December 9, 1993, accused-appellant, assisted by Atty. Alfredo Kallos, entered a plea of not guilty.[7]

After the prosecution rested its case, accused-appellant, through counsel, filed a Demurrer to Evidence but the same was denied in an order dated September 21, 1994.[8] While accused-appellant opted not to testify, the defense presented Police Officer Brandon Dyanko and Lilia Santillan to testify on the police blotter regarding the June 13 shooting incident, and on the Memorandum for Preliminary Investigation,[9] respectively. Thereafter, the trial court found accused-appellant guilty of the crime charged and was sentenced accordingly.

Hence this appeal with the following assigned errors:

“The trial court erred as follows:

“IN CONVICTING THE ACCUSED-APPELLANT OF AGGRAVATED OR QUALIFIED ILLEGAL POSSESSION OF FIREARMS, THE TRIAL COURT INTERFERED WITH BRANCH 9 OF THE SAME REGIONAL TRIAL COURT WHICH ACQUITTED HIM OF THE CRIME OF HOMICIDE.

“DESPITE THE PROSECUTIONS FAILURE TO ESTABLISH THE ELEMENTS CONSTITUTIVE OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS, THE TRIAL COURT CONVICTED THE ACCUSED-APPELLANT.”[10]

In support of the first assignment of error, accused-appellant contends that inspite of the fact that it was made known to the trial court that Branch 9 of the same court (Regional Trial Court of Legazpi City) acquitted him in Criminal Case No. 6336 for homicide, said court still entertained Criminal Case No. 6337 for illegal possession of firearms aggravated by homicide under P.D. 1866.

This contention is not tenable. There was no interference by the trial court (Branch 3) with Branch 9 of the same Regional Trial Court which acquitted the accused-appellant of the crime of homicide. As pointed out by the Solicitor General, citing *People vs. Quijada*,[11] qualified illegal possession of firearms and homicide are distinct and separate offenses punishable under separate laws. Considering that accused-appellant allegedly used an unlicensed firearm in killing Siegfred Perez, he was charged with aggravated illegal possession of firearms. His acquittal of the homicide did not preclude his prosecution for aggravated illegal possession of firearms for they were two distinct and separate crimes.

The trial court convicted the accused-appellant of aggravated or qualified illegal possession of firearms as defined and penalized under Section 1, Paragraph 2 of P.D. No. 1866. However, on June 6, 1997, P.D. No 1866 was amended by R.A. 8294 which became effective on July 6, 1997, fifteen days after its publication in *Malaya and Philippine Journal* on June 21, 1997.

Section 1 of PD 1866, as amended by RA 8294, now reads:

“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) 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, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

“The penalty of prision mayor in its minimum period and a fine of Thirty Thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered 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 an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

“If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

“The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

“The penalty of arresto mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.” (emphasis ours)

In *People vs. Quijada*,^[12] we ruled that violation of Presidential Decree No. 1866 is an offense distinct from murder. With the enactment of Republic Act 8294 amending PD 1866, we have now abandoned the doctrine in *Quijada*. Applying the new law (RA 8294) in *People vs. Molina*,^[13] we declared, thus:

“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 a 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 the 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.’

‘x x x x x x x x

‘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 v. 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 v. 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. Flavio.] So, do I take it that the amendment is accepted?

‘Senator Revilla. Yes, it is accepted, Mr. President.

‘The Presiding Officer [Sen. Flavio.] 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.”

Under the amendment, if homicide or murder is committed with the use of an unlicensed firearm, such use of the same should only be considered as an aggravating circumstance.[14]

Similarly, the records of the present case bare just that.

From the information alone, it is evident that the crime of Illegal Possession of Firearms was attended by another crime the killing of Siegfried Perez. In fact, during the presentation of evidence for the prosecution, it is revealed that the evidence offered were those used in the other case against accused-appellant.[15] The defense likewise

showed that a separate case for murder was indeed instituted.[16]

While the crime of Illegal Possession of Firearms in the present case had been committed on June 13, 1993, we should give retroactive application to RA 8294 which considers the use of an unlicensed firearm in the killing of the victim as a mere aggravating circumstance, as it is advantageous to accused-appellant.[17]

Even granting that a simple case of illegal possession of firearms may be permitted against accused-appellant, the same must still fail, for the prosecution neglected to show any proof that the questioned firearm was unlicensed. The fact that the subject firearm is a paltik revolver is of no consequence. In *People vs. De Vera, Sr.* [18] where the subject firearm was a mere sumpac, we did not dispense with the requirement of proving the same to be unlicensed.[19] Withal, an acquittal is in order.

WHEREFORE, the appeal is GRANTED. Accused-appellant PO2 Rodel Samonte is ACQUITTED of the crime of Illegal Possession of Firearms under PD 1866, as amended by RA 8294. His immediate release from prison is hereby ordered unless he is held for other legal cause.

The Director of Prisons is ordered to report within ten (10) days his compliance with this decision.

SO ORDERED.

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

[1] RTC Decision, p. 22, ROLLO.

[2] TSN, March 16, 1994, p. 6; January 25, 1995, p. 5.

[3] TSN, February 4, 1994, pp. 7-9; March 16, 1994, pp. 6-10; RTC Decision, pp. 16-17, ROLLO.

[4] TSN, April 20, 1994, p. 31; RTC Decision, p. 18, ROLLO.

[5] TSN, May 4, 1994, p. 10 and pp. 11-12.

[6] Information, p. 9, ROLLO.

[7] Certificate of Arraignment, p. 61, RECORDS.

[8] RTC Decision, p. 18, ROLLO.

[9] I.S. No. 93-0260.

[10] Appellants Brief, p. 42, ROLLO.

[11] 259 SCRA 191 [1996].

[12] Ibid.

[13] 292 SCRA 742, pp. 779-782 [1998].

[14] *People vs. Valdez*, 304 SCRA 611, p. 630 [1999].

[15] TSN, April 20, 1994, pp. 26, 27, 28, 29 and 30.

[16] TSN, January 25, 1995, pp. 12-18; in relation with Exhibits 2, 3, 4, 5, and 6.

[17] Art. 22 of the Revised Penal Code; *People vs. Valdez*, 304 SCRA 611, p. 630 [1999].

[18] 308 SCRA 75, p. 100 [1999].

[19] Ibid.

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