

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO VALDEZ, ACCUSED APPELLANT.

G.R. No. 127663. March 11, 1999

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Rolando Valdez seeks reversal of the judgment of conviction promulgated by Branch 45 of the Regional Trial Court of the First Judicial Region stationed in Urdaneta, Pangasinan, on October 24, 1996 sentencing him to death for the complex crime of Multiple Murder with double Frustrated Murder, and likewise separately sentencing him to suffer the prison term of reclusion perpetua for the crime of Illegal Possession of Firearms and Ammunitions (Presidential Decree No. 1866).

The information against accused-appellant, Bernard Castro, and one John Doe for the complex crime of Multiple Murder with Double Frustrated Murder charged:

That on or about 8:30 o'clock in the evening of September 17, 1995, at Sitio Cabaoangan, barangay Nalsian, municipality of Manaoag, province of Pangasinan, and within and jurisdiction of this Honorable Court, the said accused conspiring, confederating and mutually helping one another with intent to kill, and each armed with caliber .30 carbines did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, simultaneously attacked and fired their caliber .30 carbines at Ramon Garcia, Jr., Jean Marie Garcia, Willy Acosta, Sandra Montano, William Montano and Randy Tibule while they were on board a tricycle, on their way to a dance party, hitting them in the different parts of their bodies which caused the instantaneous death of Ramon Garcia, Jr., Jean Marie Garcia, Willy Acosta and Sandra Montano, to the damage and prejudice of their respective heirs, and inflicting fatal injuries to William Montano and Randy Tibule, in the different parts of their bodies, having thus performed all the acts which would have produced the crime of murder with respect to both but which did not by reason of causes independent of the will of the accused, namely, the able and timely medical assistance given the said victims William Montano and Randy Tibule, which prevented their death.

Contrary to Article 248 in Relation to Article 48 and Article 6 of the RPC.

(pp. 1-2, Record of Crim. Case No. U-8747)

The Information for Illegal Possession of Firearms and Ammunitions pertinently averred:

That on or about 8:30 o'clock in the evening of September 17, 1995 at Sitio Cabaoangan, Barangay Nalsian, Municipality of Manaoag, province of Pangasinan and within and jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously, have in his possession, custody and control, a firearm, to wit: Caliber .30 carbine without first having secured the proper license thereof from the authorities and which he used in committing the offense of multiple murder and double frustrated murder.

Contrary to Presidential Decree 1866.

(p. 1, Record of Crim. Case No. U-8749)

The inculpatory facts adduced by the prosecution during trial are succinctly summarized in the People's brief as follows:

On September 17, 1995, at around 8:00 in the evening, William Montano (16 years old), Randy Tibule (17 years old), Jean Marie Garcia, Willie Acosta, Sandra Montano and Ramon Garcia, Jr., were at the house of Randy Tibule in Manaoag, Pangasinan. They were discussing how to go to the wedding party of Jean Marie's cousin in Sitio Cabaoangan (TSN June 11, 1996, pp. 7-8; June 18, 1996, pp. 23-24).

After discussion, they rode in the tricycle driven by Ramon Garcia going to Cabaoangan. Behind Garcia were Tibule and Willie. Jean was seated inside the side car with Sandra and William Montano (TSN June 11, 1996, pp. 7-11; TSN June 18, 1996, pp. 23-25).

After making a turn along the barangay road leading to Sitio Cabaoangan, they met appellant Rolando Valdez and his companions who were armed with guns. The tricycle's headlight flashed on their faces. Without warning, they pointed their guns and fired at Montano's group. Thereafter, after uttering the words, "nataydan, mapan tayon" (They are already dead. Let us go), Valdez and companions left (TSN June 11, 1996, pp. 11-14).

The shooting incident left Ramon Garcia, Jean Marie Garcia, Sandra Montano and Willie Acosta dead (TSN June 11, 1996, pp. 14-16). They sustained the following injuries:

Jean Marie Garcia:

- gunshot wound .5 cm. in diameter, 1 inch lateral of the nipple right through and through trajecting the middle lobe of the lungs, rt ventricle of the heart, middle lobe of the lung, left with point of exit 1 inch in diameter 1 inch lateral of the nipple, left.

(Exhibit B)

Ramon Garcia:

- gunshot wound, .5 cm. diameter point of entrance ear canal thru and thru trajecting the skull brain substance with point of exit temporal area right.

- Another gunshot wound .5 cm. in diameter point of entrance anterior axillary line left at the lable nipple trajecting the lung (left) heart ventricle and lung (right) with point of exit 1 cm. in diameter, 1 inch lateral the nipple right.

(Exhibit C)

Sandra Montano:

- gunshot wound .6 cm. in diameter, point of entrance at the temporal area left, penetrating the skin, skull minigas, brain substance (right) (tempral regis) where the slug lodge.

(Exhibit D)

Willie Acosta:

- gunshot wound, .5 cm. in diameter below coastal arch point of entrance trajecting the upper 3[rd] of the stomach thru and thru trajecting the upper third of the stomach of thoracic vein with the point of exit 1 cm. in diameter at the level of the 7[th] thorasic vertebrae.

(Exhibit E)

On the other hand, William Montano and Randy Tibule survived the attack. They suffered serious gunshot injuries that could have caused their death were it not for the timely medical attention given them (TSN July 3, 1996, p. 6). Montano sustained several gunshot wounds on the left arm, two on the left upper back, another on

the left shoulder and middle right finger (TSN June 25, 1996, p. 608). Tibule sustained two gunshot wounds, one at the fifth upper quadrant (stomach) and the other at the left periumbelical (TSN July 3, 1996, pp. 7-8).

(pp. 215-219, Rollo.)

In its decision dated October 24, 1996, the trial court rendered a judgment of conviction in the two cases, finding and disposing:

IN CRIMINAL CASE NO. U-8747: --

the accused ROLANDO VALDEZ y LIPURDA, GUILTY beyond reasonable doubt of the crime of MULTIPLE MURDER WITH DOUBLE FRUSTRATED MURDER defined and penalized under Republic Act No. 7659 otherwise known as the Heinous Crime Law, the offense having been a complex crime the penalty of which is in the maximum, and with the attendant aggravating circumstances of evident premeditation and abuse of superior strength, hereby sentences him the ultimum supplicum of DEATH to be executed pursuant to Republic Act No. 8177 known as the Lethal Injection Law, to pay the heirs of the deceased RAMON GARCIA, JR., WILLIE ACOSTA, JEMARIE GARCIA and SANDRA MONTANO and RANDY TIBULE, as follows:

1). To the heirs of the deceased Ramon Garcia, jr.:

- a) P 50,000 as indemnity
- b) P 52,116.00 as actual damages
- c) P 500,000.00 as moral damages

2). To the heirs of the deceased WILLIE ACOSTA"

- a) P 50,000 as indemnity
- b) P 26,358.00 as actual damages
- c) P 500,000.00 as moral damages

3) To the heirs of the deceased JEMARIE GARCIA:

- a) P 50,000 as indemnity
- b) P 500,000.00 as moral damages

4) To the heirs of the deceased Sandra Montano:

- a) P 50,000 as indemnity
- b) P 48,269.80 as actual damages
- c) P 500,000.00 as moral damages

5) To the victim WILLIAM MONTANO:

- a) P 39,133.92 as actual damages
- b) P 100,000.00 as moral damages

6) To the victim RANDY TIBULE:

- a) P 36,233.65 as actual damages
- b) P 100,000.00 as moral damages

and to pay the costs.

WITH RESPECT TO CRIMINAL CASE NO. U-8749: --

the accused ROLANDO VALDEZ y LIPURDA GUILTY beyond reasonable doubt of the crime of ILLEGAL POSSESSION OF FIREARM AND AMMUNITIONS (Presidential Decree No. 1866) and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay the costs.

Finally, it is said: "Dura lex, sed lex," translated as: "The law is harsh, but that is the law!"

SO ORDERED.

(pp. 180-181, Rollo.)

Hence, the instant review, with accused-appellant anchoring his plea for reversal on the following assigned errors:

- THE TRIAL COURT ERRED FAILING TO CONSIDER THE MATERIAL, SUBSTANTIAL, IMPORTANT AND SIGNIFICANT, DISCREPANCIES IN THE AFFIDAVITS OF PROSECUTION WITNESSES AND THEIR TESTIMONIES IN COURT;
- THE TRIAL COURT ERRED IN UPHOLDING THE RECANTATIONS OF PROSECUTION WITNESSES;
- THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE SERIOUS DOUBTS ON THE IDENTITY OF ACCUSED, ROLANDO VALDEZ AS THE GUNMAN;
- THE TRIAL COURT ERRED IN FAILING TO CONSIDER MOTIVE ON THE PART OF BERNARDO CASTRO TO FIRE AT, AS HE ACTUALLY FIRED AT THE OCCUPANTS OF MOTORIZED TRICYCLE;
- THE TRIAL COURT ERRED IN FAILING TO APPRECIATE AGAINST THE PROSECUTION ITS DELIBERATE FAILURE TO PRESENT THE POLICE INVESTIGATORS WHO INVESTIGATED THE INCIDENT AND IT WAS THE DEFENSE WHICH PRESENTED SAID POLICE INVESTIGATORS;
- THE TRIAL COURT ERRED IN DECLARING THAT ACCUSED ROLANDO VALDEZ DID NOT DENY THE ACCUSATION AGAINST HIM FOR VIOLATION OF P.D. 1866 BECAUSE HE DID NOT ALLEGEDLY TOUCHED IT IN HIS MEMORANDUM.

(pp. 106-107, Rollo)

After a painstaking review of the record and a deliberate consideration of the arguments of accused-appellant, the Court does not find enough basis to reverse.

Accused-appellant claims that the trial court erred in failing to consider what he says are material, substantial, important and significant discrepancies between the affidavits of prosecution witnesses and their testimonies in court. Accused-appellant points to the Statement of William Montano, taken by SPO1 Mario Suratos on September 20, 1995 (Exhibit 1: p. 238, Record), and the Statement taken on September 24, 1995 (Exhibit 4: p. 291, Record), both in Villaflor Hospital, Dagupan City where William Montano specifically named Bernard Castro as the person who flagged down the motorized tricycle he and the other victims were riding. This, he claims, is inconsistent with his testimony during the trial where he stated:

ATTY. RANCHEZ:

Q. Now, were you able to reach Sitio Cabauangan, Nalsiam, Manaoag, Pangasinan?

A. No, sir.

Q. Why?

A. When we were entering the road at Sitio Cabauangan at around ten to fifteen meters, somebody plugged (sic) down the tricycle, sir.

Q. And what happened next after somebody plugged (sic) down your tricycle?

A. Somebody standing was lighted by the headlight of our motorcycle, sir.

Q. Now, what happened next, if any?

A. The one who was standing and was lighted with the headlight was immediately recognized by me, sir.

Q Who was that person whom you saw and you immediately recognized?

A. That one, sir.

ACTG. INTERPRETER:

Witness pointing to a person wearing white t-shirt seated at the bench for the accused, and when asked his name, he gave his name as Rolando Valdez.

(pp. 11-12, tsn, June 11, 1996)

We are not persuaded.

In his Statements dated September 20, 1995 (Exhibit 1) and September 24, 1995 (Exhibit 4), William Montano pointed to Bernard Castro as the person who flagged down the motorized tricycle ridden by the victims. On November 8, 1995, William and his co-victim/survivor Randy Tibule executed a "Pinagsamang Salaysay sa Pag-uurong ng Demanda" where they disclaimed having seen Bernard Castro at the scene of the crime. They declared that after a more thorough consideration of what transpired, they have realized that the filing of the complaint against Bernard Castro was a mistake and the result of misunderstanding or misapprehension of what actually happened. In his testimony in court, William, however, identified accused-appellant as the person illuminated by the headlight of the tricycle, for which reason William readily recognized him. We, therefore, find nothing inconsistent between his declarations during the investigation and his testimony in court. The lack of precision with which he distinguished between the person who flagged down the tricycle and the other person who he recognized because of the headlight of the tricycle cannot be considered as inconsistency at all. The same holds true with claimed discrepancies between the statements of Randy Tibule during the investigation and his testimony in court.

Accused-appellant stubbornly insists that following the withdrawal or retraction of the accusation of several witnesses against Bernard Castro, these same witnesses' accusation against accused-appellant becomes doubtful.

We are not convinced.

In all the references by accused-appellant in pages 10-12 of his brief to the sworn declarations of prosecution witnesses made during the investigation of the case, Bernard Castro may have indeed been identified and named as one of the gunmen. It may readily be noted in these very same references, however, that all these prosecution witnesses referred to two other companions, then unidentified, of Bernard Castro. Even in the Joint Affidavit (Exhibit "7") referred to in page 11 of the brief, the police investigators categorically referred to "Bernard Castro y Nazareno, alias Toti as one of the suspects or assailants involved in the shooting incident" (p. 112, Rollo). The logical conclusion that may be drawn therefrom is that there is at least one other assailant in addition to Bernard Castro, and as it developed, accused-appellant was subsequently and positively named as such. Withal, we cannot

subscribe to accused-appellant's ratiocination that if the witnesses pointed to Bernard Castro as one of the perpetrators of the crime, then it follows that accused-appellant cannot be one other and additional perpetrator anymore. Accused-appellant's reasoning on this point is absolutely flawed. It is totally unacceptable.

Accused-appellant likewise seeks shelter in the mysterious withdrawal of the victims' charges against Bernard Castro. He insinuates that such recantation should not have been given any consideration. But, this is water under the bridge. Anyway, even in the remotest possibility that the retraction of the accusation against Bernard Castro may be reversed, it does not get accused-appellant off the hook. Considering that accused-appellant had himself been positively identified, together with Bernard Castro, as one of the other perpetrators of the crime, his conviction may still stand independently and regardless of whether or not Castro is indicted or remains unprosecuted.

Accused-appellant further argues that it is not he but Castro who had the motive to shoot and fire at the occupants of the motorized tricycle, mistaking one of the occupants thereof for Isidro Capistrano, Castro's former classmate and with whom he earlier had an altercation. It is very clear in his brief, however, that accused-appellant predicates this argument on the mistaken premise that he was not positively identified in the case at bar although he admits that it is established that he was at the scene of the crime (p. 114, Rollo). This argument will not hold simply because it is settled that accused-appellant had been positively identified by eyewitnesses and victims William Montano and Randy Tibule. It is basic and fundamental rule that proof of motive is necessary for conviction only when there is doubt as to the identity of the accused, not when accused has been positively identified as in the present case (*People vs. Caggaunan*, 94 Phil. 118 [1953]; *People vs. Realon*, 99 SCRA 422 [1980]; *People vs. Pano*, 257 SCRA 274 [1996]). Besides, it is also to be noted that lack of motive for committing the crime does not preclude conviction, considering that, nowadays, it is a matter of judicial knowledge that persons have killed or committed serious offense for no reason at all (*People vs. Cabodoc*, 263 SCRA 187 [1996]).

Accused-appellant further contends that the prosecution's deliberate and intentional failure to present the investigating police officers and their Joint Affidavit (Exhibit "7") constitutes culpable suppression of evidence which, if duly taken into account, will merit his acquittal.

The argument is puerile, simply because the defense itself was able to present the police officers, and exhibit "7" (p. 116, Rollo). It is to be further noted that as earlier pointed out, the declaration of SPO1 Suratos and SPO1 Carbonel did not categorically rule out the possibility of convicting other persons as co-principals of Castro. On the contrary, it is clear from such affidavit that there was more than just one perpetrator of the crime. It even confirms and corroborates the eyewitness accounts of William Montano and Randy Tibule pointing to accused-appellant as one of the other companions of Castro.

After meticulously and carefully going through each and every piece of evidence on record, the Court finds no reason to depart from the trial court's accord of credence to the eyewitness accounts of William Montano and Randy Tibule who positively identified accused-appellant as one of the persons who shot and fired at them and their companions that fateful night. We agree with the trial court that the evidence points beyond reasonable doubt that accused-appellant was one of those principally responsible for the deaths of the four victims in this case and the wounding of two others. There is also sufficient evidence that the aggravating circumstance of treachery attended the killings, thus, qualifying the same to murder.

Under paragraph 16, Article 14 of the Revised Penal Code, the qualifying circumstance of treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to ensure its execution without risk to himself arising from any defensive or retaliatory act which the

victim might make (*People vs. Santos*, 270 SCRA 650 [1997]). The settled rule is that treachery can exist even if the attack is frontal if it is sudden and unexpected, giving the victim no opportunity to repel it or depend himself against such attack. What is decisive is that the execution of the attack, without slightest provocation from the victim who is unarmed, made it impossible for the victim to defend himself or to retaliate (*People vs. Javier*, 269 SCRA 181 [1997]).

The trial court ruled that evident premeditation is likewise present. After reviewing the evidence, however, we do not find any showing of evident premeditation on the part of accused-appellant. While there may be testimonial evidence pointing to an altercation between Bernard Castro and a certain Capistrano, it does sufficiently prove the attendance of the aggravating circumstance of evident premeditation. It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evidencing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation" (*People vs. Torejas*, 43 SCRA 158 [1972]).

To establish the existence of evident premeditation, the following have to be prove: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) sufficient lapse of time between the determination and the execution to allow the offender to reflect on the consequences of his act (*People vs. Juan*, 254 SCRA 478 [1996]).

Establishing a basis or motive for the commission of the crime does not constitute sufficient ground to consider the existence of evident premeditation. At best, it may indicate the time when the offenders determined to commit the crime (the first element). Their act of arming themselves with caliber .30 carbines and thereafter waiting for their supposed victims at ambush positions may have also indicated that they clung to their determination to commit the crime (the second element). More important that these two elements is the proof that a sufficient period of time had lapsed between the outward act evidencing intent and actual commission of the offense (the third element). There must have been enough opportunity for the initial impulse to subside. This element is indispensable for circumstance of evident premeditation to aggravate the crime. In *People vs. Canial*, 46 SCRA 134 [1972], this Court reiterates:

In other words, this circumstance can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. There must be 'an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what they had planned to do, an interval long enough for the conscience and better judgment to overcome the evil desire and scheme....

(p. 649)

As early as in *People vs. Durante*, 53 Phil. 363 [1929], the Court had stressed the importance of sufficient time between the criminal act and the resolution to carry out the criminal intent, affording such opportunity for cool thought and reflection to arrive at a calm judgment. Obviously, this element is wanting in the case at bar. Right after the supposed heated argument between Bernard Castro and Capistrano, Castro and company went home to get the firearms and not long thereafter mounted the assault. There was no chance for the anger to subside. The culprits in the case at bar had no opportunity for cool thought and reflection to arrive at a calm judgment.

The other aggravating circumstance considered by the trial court is that of abuse of superior strength. This contravenes the very basic and elementary doctrine in our jurisdiction that the aggravating circumstance of abuse of superior strength is absorbed in treachery (*People vs. Mobe*, 81 Phil. 58 [1948]; *People vs. Nierra*, 96 SCRA 1 [1980]; *People vs. Torrefiel*, 256 SCRA 369 [1996]).

Notwithstanding the absence of any aggravating circumstances, if we were to uphold the trial courts' premises on

the complex nature of the crime committed, the death sentence, being the maximum penalty for murder, would still have been the imposable penalty under Article 48 of the Revised Penal Code. The Court however, finds compelling reasons to reduce the sentence from one death penalty (for the complex crime of multiple murder with double frustrated murder) and one reclusion perpetua (for the complex crime of illegal possession of firearms and ammunitions) to four counts of reclusion perpetua (for 4 murders) and two indeterminate sentences of prision mayor to reclusion temporal (for the 2 frustrated murders).

The recommendation of the Solicitor General in the People's brief that accused-appellant should instead be convicted of four counts of murder and two counts of frustrated murder is well taken.

The trial court erred when it allowed itself to be carried away by the erroneous Information filed by the Office of the Provincial Prosecutor of Pangasinan charging the complex crime of multiple murder and double frustrated murder (p. 1, Record: Crim. Case No. U-8747). It may be noted that in his Resolution dated September 26, 1995, the investigating municipal trial court judge of Manaoag, Pangasinan, found a prima facie case for four separate counts of murder (pp. 101- 102, Ibid.) Too, the same investigating judge in his Resolution dated October 31, 1995 found a prima facie case for two counts of frustrated murder (pp. 43-44, Ibid.). It was upon reinvestigation by the Office of the Provincial Prosecutor of Pangasinan that a case for the complex crime of murder with double frustrated murder was instead filed per its Joint Resolution dated November 17, 1995 (pp. 4-6, Ibid.).

The concept of a complex crime is defined in Article 48 of the Revised Penal Code, to wit:

ART. 48. Penalty for complex crimes - When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)

The case at bar does not fall under any of the two instances defined above. The Office of the Provincial Prosecutor of Pangasinan erroneously considered the case as falling under the first. It is clear from the evidence on record, however, that the four crimes of murder resulted not from a single act but from several individual and distinct acts. For one thing, the evidence indicates that there was more than one gunman involved, and the act of each gunman is distinct from that of the other. It cannot be said therefore, that there is but a single act of firing a single firearm. There were also several empty bullet shells recovered from the scene of the crime. This confirms the fact that several shots were fired. Furthermore, considering the relative positions of the gunmen and their victims, some of whom were riding the motorized tricycle itself while the others were seated inside the sidecar thereof, it was absolutely impossible for the four victims to have been hit and killed by a single bullet. Each act by each gunman pulling the trigger of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to the complex crime of multiple murder. We therefore rule that accused-appellant is guilty, not of a complex crime of multiple murder, but of four counts of murder for the death of the four victims in this case. In the same manner, accused-appellant is likewise held guilty for two counts of frustrated murder.

Article 248 of the Revised Penal Code, as amended, provides the penalty of reclusion perpetua to death for the crime of murder. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty or reclusion perpetua. In the case at bar, accused-appellant, being guilty of four separate counts of murder, the proper penalty should be four sentences of reclusion perpetua. In addition, he being guilty of two counts of frustrated murder, accused-appellant must be meted out an indeterminate sentence ranging from a minimum of 6 years and 1 day of prision mayor to a maximum of 12 years and 1 day of reclusion temporal for each offense.

Now, to the matter of accused-appellant's conviction for illegal possession of unlicensed firearm under

Presidential Decree No. 1866. It was recently held in the case entitled *People vs. Molina* (G.R.No. 115835-36, July 22, 1998), and reiterated in *People vs. Feloteo* (G.R. No. 124212, September 17, 1998), that there can be no separate conviction of the crime of illegal possession of firearms under Presidential Decree No. 1866 in view of the amendments introduced by Republic Act No. 8294.

Instead, illegal possession of firearms is merely to be taken as an aggravating circumstance per Section 1 of Republic Act No. 8294, which in part, provides:

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

Republic Act No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The crimes involved in the case at bar were committed on September 17, 1995. As in the case of any penal law, the provisions of Republic Act No. 8294 will generally have prospective application. In cases, however, where the new law will be advantageous to the accused, the law may be given retroactive application (Article 22, Revised Penal Code). Insofar as it will spare accused-appellant in the case at bar from a separate conviction for the crime of illegal possession of firearms, Republic Act No. 8294 may be given retroactive application in Criminal Case No. U-8749 (for Illegal Possession of Firearm) subject of this present review.

As a word of caution, however, the dismissal of the present case for illegal possession of firearm should not be misinterpreted as meaning that there can no longer be any prosecution for the crime of illegal possession of firearm. In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted coup d'etat under Section 3).

However, the use of an unlicensed firearm in the case at bar cannot be considered as a special aggravating circumstance in Criminal Case No. U-8747 (for Complex Crime of Multiple Murder), also under review herein, because it will unduly raise the penalty for the four counts of murder from four reclusion perpetua to that of four-fold death. Insofar as this particular provision of Republic Act No. 8294 is not beneficial to accused-appellant because it unduly aggravates the crime, this new law will not be given retroactive application, lest it might acquire the character of an ex-post facto law.

WHEREFORE, premises considered, the decision with respect to Criminal Case No. U-8747 is hereby MODIFIED. Accused-appellant is found guilty beyond reasonable doubt of four counts of murder and hereby sentenced to suffer the penalty of four sentences of reclusion perpetua. He is also found guilty beyond reasonable doubt of two counts of frustrated murder and hereby meted two indeterminate sentences, each, ranging from six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. The appealed judgment relating to the civil liabilities of accused-appellant towards the six victims is AFFIRMED.

Criminal Case No. U-8749 involving Presidential Decree No. 1866 is hereby dismissed.

No special pronouncement is made as to costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Puno, Vitug, Kapunan, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Mendoza and Panganiban, JJ., in the result.

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