

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUILLERMO NEPOMUCENO, JR., ACCUSED-APPELLANT.

G.R. No. 130800. June 29, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Accused-appellant Guillermo Nepomuceno, Jr., (hereafter NEPOMUCENO) was charged before the Regional Trial Court of Manila with parricide in Criminal Case No. 94-136491 and with qualified illegal possession of firearm in Criminal Case No. 94-139839. The crime of parricide was alleged to have been committed with the use of an unlicensed firearm. The two cases were consolidated and assigned to Branch 46 of the said court. NEPOMUCENO entered a plea of not guilty in each case.

Despite the consolidation, Criminal Case No. 94-136491 was tried first. On 20 November 1996, judgment was rendered finding NEPOMUCENO guilty beyond reasonable doubt of the crime of parricide and sentencing him to suffer a prison term of forty years of reclusion perpetua. NEPOMUCENO appealed the judgment to us in G.R. No. 127818. In our decision of 11 November 1998, we affirmed the appealed judgment with the modification that the penalty imposed was changed from "forty years of reclusion perpetua" to reclusion perpetua.

Meanwhile, the trial court proceeded with the trial of Criminal Case No. 139839. The information in that case reads as follows:

That on or about May 2, 1994, in the City of Manila, Philippines, the said accused, being then a private individual not being authorized by law to possess firearm and ammunition, did then and there willfully and unlawfully keep, carry in his possession and under his custody and control one (1) cal. .38 revolver and one (1) piece of ammunition, without first obtaining the necessary permit or license to possess the same from the proper authorities, and which firearm, the said accused used in committing the crime of parricide against his legal wife, Grace B. Nepomuceno, to the damage and prejudice of the latter's heirs and/or public interest.

On 24 September 1997 judgment[1] was promulgated holding that all the elements of the crime of aggravated illegal possession of firearm were present, to wit: (1) there must be a firearm; (2) the gun was possessed by the accused; (3) the accused had no license from the government; and (4) homicide or murder was committed by the accused with the use of said firearm. It then applied our ruling in *People v. Quijada*[2] that the killing of a person with the use of an illegally possessed firearm gives rise to two separate offenses, namely, (1) homicide or murder under the Revised Penal Code and (2) illegal possession of firearm in its aggravated form. Accordingly, the trial court convicted NEPOMUCENO of the violation of Section 1, paragraph 2, P.D. No. 1866, as amended by R.A. No. 8294, and sentenced him to suffer the penalty of death by lethal injection. The decretal portion of the decision reads:

WHEREFORE, the court finds the accused guilty beyond reasonable doubt of violating Presidential Decree No. 1866, Section 1, Paragraph 2, as amended by Republic Act No. 8294, and hereby sentences him to suffer the supreme penalty of death by lethal injection.

In the commission of the crime, the accused showed remorse by immediately bringing his wife to a hospital and voluntarily surrendering to the authorities. Article 10 of the Revised Penal Code, however, prohibits the application of the rules on the appreciation of mitigating and aggravating circumstances in the imposition of the penalty when the accused is charged [with] violating a special law.

However, the court recommends to the Chief Executive the grant of executive clemency to the accused by reducing the penalty to prision correccional in its maximum period and a fine of P15,000.00, the penalty imposed for illegal possession of firearms with only .380 firepower in its non-aggravated form.

IT IS SO ORDERED.

Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659,[3] the judgment and the record of the case were forwarded to this Court for automatic review.

Two Appellant's Brief were separately filed for NEPOMUCENO by counsel de oficio Domingo Palarca[4] and counsel de oficio Katrina Legarda Santos.[5] In the first, NEPOMUCENO asks for the reversal of the challenged decision because the trial court erred in convicting him on the basis of "evidence by inference" and in ruling that circumstantial evidence showed that the accused had animus possidendi of the unrecovered firearm. In the second Appellant's Brief, he asserts that this Court must allow the benefit of R.A. No. 8294 to take retroactive effect so as to acquit him of the crime of qualified illegal possession of firearm. In the alternative, he asks for acquittal because the trial court erred in finding that the prosecution proved an essential requisite of the offense, i.e., the accused possessed the firearm without the requisite license or permit.

In its Manifestation in Lieu of Appellees' Brief, the Office of the Solicitor General asks for the reversal of the challenged decision and for the acquittal of NEPOMUCENO on these grounds: (1) the prosecution failed to prove that NEPOMUCENO had no authority or license to possess the firearm; and (2) pursuant to *People v. Bergante*,[6] which gave retroactive effect to R.A. No. 8294,[7] 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 and shall no longer be separately punished.

The information in Criminal Case No. 94-139839 alleged that the crime of illegal possession of firearm was committed on 2 May 1994, i.e., before the approval of R.A. No. 8294 on 6 June 1997. Section 1 thereof radically amended Section 1 of P.D. No. 1866 by, among others things, revising the second paragraph of Section 1 of P.D. No. 1866 from the following:

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

to:

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.

Under the old second paragraph of Section 1 of P.D. No. 1866, if the killing of a person is committed with the use of the unlicensed firearm, the accused could be prosecuted for, and convicted of, (1) illegal possession of firearm in an aggravated form and (2) either murder or homicide. In *People v. Quijada*,[8] this Court declared:

The unequivocal intent of the second paragraph of Section 1 of P.D. No. 1866 is to respect and preserve homicide or murder as a distinct offense penalized under the Revised Penal Code and to increase the penalty for illegal possession of firearm where such a firearm is used in killing a person. Its clear language yields no intention of the lawmaker to repeal or modify, pro tanto, Articles 248 and 249 of the Revised Penal Code, in such a way that if an unlicensed firearm is used in the commission of homicide or murder, either of these

crimes, as the case may be, would only serve to aggravate the offense of illegal possession of firearm and would not anymore be separately punished. Indeed, the words of the subject provision are palpably clear to exclude any suggestion that either of the crimes of homicide and murder, as crimes mala in se under the Revised Penal Code, is obliterated as such and reduced as a mere aggravating circumstance in illegal possession of firearm whenever the unlicensed firearm is used in killing a person. The only purpose of the provision is to increase the penalty prescribed in the first paragraph of Section 1 - reclusion temporal in its maximum period to reclusion perpetua - to death, seemingly because the accused's manifest arrogant defiance and contempt of the law in using an unlicensed weapon to kill another, but never, at the same time, to absolve the accused from any criminal liability for the death of the victim.

But, pursuant to the amendment, the use of an unlicensed firearm in the commission of murder or homicide is treated as an aggravating circumstance. Therefore, the illegal possession or use of the unlicensed firearm is no longer separately punished. This Court emphatically said so in *People v. Bergante*,^[9] thus:

The violation of P.D. No. 1866 should have been punished separately conformably with our ruling in *People v. Quijada*. Nevertheless, fortunately for appellant Rex Bergante, P.D. No. 1866 was recently amended by Republic Act. No. 8294, otherwise known as "An Act Amending the Provisions of Presidential Decree No. 1866, as Amended. The third paragraph of Section 1 of said Act provides that "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." In short, only one offense should be punished, viz., either homicide or murder, and the use of the unlicensed firearm should only be considered as an aggravating circumstance. Being favorable to Rex Bergante, this provision may be given retroactive effect pursuant to Article 22 of the Revised Penal Code, he not being a habitual criminal.

Being clearly favorable to NEPOMUCENO, who is not a habitual criminal, the amendment to the second paragraph of Section 1 of P.D. No. 1866 by R.A. No. 8294 should be given retroactive effect in this case. Considering that NEPOMUCENO was in fact convicted in the case for parricide, and that his conviction was affirmed in our decision of 11 November 1998 in G.R. No. 127818, with the slight modification that the penalty should be reclusion perpetua and not "forty years of reclusion perpetua," it follows that NEPOMUCENO should be ACQUITTED in the case at bar.

One final word. Assuming that NEPOMUCENO could be separately punished for illegal possession or use of an unlicensed firearm, the imposition of the death penalty on him has no legal basis. As was emphasized in *Quijada*, under the second paragraph of Section 1 of P.D. No. 1866 the commission of murder or homicide with the use of an unlicensed firearm served to aggravate the offense of illegal possession of firearm and, accordingly, increased the penalty prescribed in the first paragraph of the Section, i.e., from "reclusion temporal in its maximum period to reclusion perpetua" to the single indivisible penalty of death.

It must be underscored that although R.A. No. 7659 had already taken effect at the time the violation of P.D. No. 1866 was allegedly committed by NEPOMUCENO, there is nothing in R.A. No. 7659 which specifically reimposed the death penalty in P.D. No. 1866. Without such reimposition, the death penalty imposed in Section 1 of P.D. No. 1866 for aggravated illegal possession of firearm shall remain suspended pursuant to Section 19 (1) of Article III of the Constitution. Conformably therewith, what the trial court could impose was reclusion perpetua.

WHEREFORE, the appealed decision of 24 September 1997 in Criminal Case No. 94-139839 of the Regional Trial Court of Manila, Branch 46, is REVERSED. Accused-appellant GUILLERMO NEPOMUCENO, JR., is hereby ACQUITTED; but he should remain in detention to serve his sentence in G.R. No. 127818.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.
Romero, J., on official business abroad.

[1] Rollo, 7-13, Per Judge Artemio S. Tipon.

[2] 259 SCRA 191 [1996].

[3] Entitled An Act to Impose the Death Penalty on Certain Heinous Crimes Amending for that Purpose the Revised Penal Code, as Amended, other Special Penal Laws and for Other Purposes, which took effect on 31 December 1993 (People v. Simon, 234 SCRA 555, 569 [1994]).

[4] Rollo, 54-71.

[5] Id., 72-95.

[6] 286 SCRA 629 [1998].

[7] Entitled An Act Amending the Provisions of Presidential Decree No. 1866, as Amended, Entitled "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."

[8] Supra note 2, at 232.

[9] Supra note 6, at 644.

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