PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO GUTIERREZ, ACCUSED-APPELLANT.

G.R. No. 132878. September 29, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition under Rule 45 of the Rules of court petitioner prays that the Decision of the Court of Appeals, dated 27 August 1997, which affirmed petitioner's conviction for illegal possession of firearms and ammunition, be modified with regard to the penalties imposed on him.

An information for violation of P.D. No. 1866 (Illegal Possession of Firearms and Ammunitions) was filed against petitioner before the Regional Trial Court, Branch 04, of Balanga, Bataan.[1] After trial, the court found petitioner guilty beyond reasonable doubt of illegal possession of a U.S. Carbine, M1, Caliber .30 with Serial No. 1713979 and sentenced him to an indeterminate penalty of seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum.[2]

Petitioner appealed the judgment of conviction with the Court of Appeals. While the case was pending with the Court of Appeals, R.A. No. 8294, an act which amended P.D. 1986, was passed. Thereafter, the Court of Appeals affirmed the decision of the trial court but reduced the penalty imposed in view of R.A. No. 8294. We quote hereunder the dispositive portion of the decision of the Court of Appeals:

> Pursuant to the second paragraph of Section 1 of R.A. 8294, the accused is found guilty beyond reasonable doubt of illegal possession of firearm, a U.S. Carbine, M1, Cal. .30 with Serial No. 1713979, under the classification and other firearms with firing capability of full automatic and by burst of two to three. The accused is sentenced to suffer the indeterminate imprisonment of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to six (1) years and one (1) day of prision mayor, as maximum, and a fine of thirty thousand (P30,000.00).
>
> WHEREFORE, foregoing considered, the appealed decision is hereby AFFIRMED with modification as stated above.
>
> SO ORDERED.[3]

Petitioner filed a motion for reconsideration of the decision of the Court of Appeals. This was denied by the Court of Appeals in its Resolution dated 5 March 1998 for lack of merit.

Petitioner now contends that the Court of Appeals erred in not classifying the subject firearm as low-powered and accordingly imposing upon him the penalty of four (4) years, two (2) months and one (1) day to six (6) years which is the maximum imposable penalty for low-powered firearms under R.A. No. 8294. He submits for resolution the sole issue of whether or not the respondent Court of Appeals acted correctly in imposing upon him a penalty of imprisonment of four (4) years, two (2) months and one (1) day of prision correccional to six (6) years and one (1) day of prision mayor when the applicable law, R.A. No. 8294, merely fixes the penalty of four

(4) years, two (2) months and one (1) day to six (6) years, considering that the firearm involved in this case is classified by R.A. 8294 and the Firearms and Explosives Unit of the Philippine National Police as a low-powered firearm.[4]

We find the petition devoid of merit.

We quote with approval the explanation of the Solicitor General as to why the subject firearm, the U.S. Carbine M1, Caliber .30, is considered a high powered firearm, to wit:

> A U.S. carbine M1, .30 caliber is considered a high powered firearm because it has an effective range about 300 yards, sufficient for close in defense. (p. 863, Encyclopedia Britannica, Volume 4). It is a gas-operated firearm which has a full or semi-automatic capability through the use of an optional selector. (p. 47, Encyclopedia Americana, U.S. Constitution Bicentennial Commemorative Edition). A gas operated firearm has a small hole or gas port on the underside of the barrel near the muzzel which permits the part of the propellent gases to escape into a cylinder holding the piston that is connected to the bolt. As the gas pressure forces back the piston and the bolt, the empty cartridge case is ejected and the hammer is cocked. A spring then will force the bolt forward. As it moves forward, the bolt will strip the top cartridge from the magazine and will seat it in the chamber ready to fire. Gas pressure thus performs automatically the reloading task formerly done by hand. For this reason, weapons of this type are often called self-loading or autoloading. (p. 673, Encyclopedia Britannica, small arms).[5]

As aptly explained by the Office of the Solicitor General, the subject firearm is capable of emitting two (2) or three (3) bullets in one squeeze of a trigger and, as such, has a firing capability of full automatic and burst of two or three which under R.A. No. 8294 is considered a high-powered firearm, the illegal possession of which is punishable by prision mayor in its minimum period.

The certification issued by the Firearms and Explosives Division of the Philippine National Police is not binding on us. While the certification states that the U.S. Carbine M1, Caliber .30 is under the category of low-powered firearm, the same does not even satisfactorily explain the basis for such a conclusion. Thus, a mere general statement that the subject firearm is low-powered without more is not sufficient to consider the same as truly low-powered. Besides, the certification does not even state that the person issuing it is an expert and knowledgeable on such matter. Finally, as pointed out by the Office of the Solicitor General, it is too late in the day for petitioner to present such evidence. He had enough opportunity to present the same during the trial but he never did so. It was only when the case was decided against him that he secured this certification.

WHEREFORE, the petition is denied.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] CA Decision, Rollo, p. 19.

[2] Id., at 18.

[3] Id., at 27.

[4] Petition, Rollo, p. 11.

[5] Comment, Rollo, pp. 45-46.

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