

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO ELESTERIO Y CARPENTERS, DEFENDANT-APPELLANT. FE CRUZ, PETITIONER, VS. EX-JUDGE ENRIQUE AGANA, THE CHIEF, NEW BILIBID P...

G.R. No. 63971. May 09, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

At two o'clock in the morning of 8 June 1981, a police car sighted a group of three men and one woman on the sidewalk of Libertad street in Pasay City and stopped to investigate. Patrolmen Joseph Nepomuceno and Ernesto Maneja alighted. While they were frisking two of the men, the third male made a run for it but was caught after a brief pursuit. A search of his person yielded a .32 caliber revolver and two rounds of live ammunition. The holster he had dropped while attempting to escape was also recovered. Ricardo Elesterio - for that was his name - admitted that he had no permit or authority to carry the firearm.[1]

In due time an information was filed against him in the Court of First Instance of Pasay City reading as follows:

The undersigned Assistant City Fiscal accuses RICARDO ELESTERIO Y CARPENTERS of the crime of VIOLATION OF GENERAL ORDER NO. 6 in rel. to PAR. 2, PRESIDENTIAL DECREE NO. 9, as amended, committed as follows:

That on or about the 8th day of June, 1981, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Ricardo Elesterio y Carpenters, did then and there wilfully, unlawfully and feloniously have in his possession and carry outside of his residence a .32 caliber revolver with SN- - 23271 and (2) two rounds live ammunitions, without having been permitted or authorized by law.

General Order No. 6, dated September 22, 1972, reads in material part as follows:

WHEREAS, in order to restore the tranquility and stability of the nation and secure the people from violence, injuries and loss of lives in the quickest possible manner and time, it is necessary to prohibit the inhabitants of the country from keeping any firearm without a permit duly and legally issued for that purpose as well as to prohibit the carrying of such firearm outside the residence of the duly licensed holder thereof;

NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, do hereby order that henceforth and until otherwise ordered by me or by my duly designated representative, no person shall keep, possess or carry outside of his residence any firearm unless such person is duly authorized to keep possess or carry any such firearm and any person violating this order shall forthwith be arrested and taken into custody and held for the duration of the emergency unless ordered released by me or by my duly designated representative.

Presidential Decree No. 9, promulgated on October 2, 1972, reads partly as follows:

WHEREAS, by virtue of said Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and

General Order No. 7 dated September 23, 1972, have been promulgated by me;

WHEREAS, subversion, rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly weapons;

NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, in order to attain the desired result of the aforesaid Proclamation No. 1081 and General Order Nos. 6 and 7, do hereby order and decree that:

1. Any violation of the aforesaid General Order Nos. 6 and 7 is unlawful and the violator shall, upon conviction suffer:

X X X

(b) The penalty of imprisonment ranging from twenty years to life imprisonment as a Military Court/Tribunal/Commission may direct, when the violation is not attended by any of the circumstances enumerated under the preceding paragraph."

The accused pleaded not guilty when arraigned on 15 July 1981.[2] Trial was held on 14 August 1981.[3] Patrolman Nepomuceno testified for the prosecution and narrated the arrest and search of the accused. The accused, testifying for himself, said the firearm did not belong to him but was passed to him by one Ray Arong minutes before the patrol car passed by them. The judge then asked if the defense had any more witnesses to present. The defense counsel said he had, to corroborate the testimony of the accused that he had earlier gone to several discotheques. The judge said this would only be cumulative, whereupon the counsel said, "Well, if that is the case, Your Honor, we rest our case with the testimony of our lone witness." [4] The judge thereupon dictated his decision in open court finding the accused guilty and sentencing him to life imprisonment.[5] The defense counsel manifested his intention to appeal, to which the judge replied: "The appeal is automatic. In the meantime he has to be held in custody. I am cancelling the bailbond." [6]

Elesterio was committed to the national penitentiary on 17 August 1981. He escaped on 21 October 1981, and filed a motion for reconsideration, which was denied on 18 November 1981. He was recaptured on 30 March 1983. On 12 May 1983, his aunt, Fe Cruz, filed a petition for habeas corpus on his behalf, alleging that: a) the sentence imposed upon him was unlawful and excessive; b) he was denied due process because the trial was held only in one sitting and the defense was not allowed to present additional witnesses; and c) the person who represented him at the trial was not a lawyer.

In its resolution dated 3 December 1984, the Court dismissed the petition for habeas corpus after considering the same with the return to the writ submitted by the Solicitor General. However, it resolved "to consider the said accused to have filed a timely notice of appeal; to REQUIRE the court a quo to elevate the records of Criminal Case No. 81-913-P to this Court within ten (10) days from notice; and to ALLOW the accused to post a bail bond of P5,000.00 for his provisional release." [7] The parties subsequently submitted their respective briefs.

In dispensing with the testimony of the other defense witnesses who were only intended to corroborate the averment of the accused that he had been to several discotheques before his apprehension, the trial court was not acting arbitrarily. The trial judge had the right to control the conduct of the trial and to bar unnecessary testimony, such as that intended merely to corroborate relatively unimportant matters, that would only unnecessarily delay the case. In *People v. Barabasa*, [8] we held that suppression of that kind of evidence "did not deprive the accused of any substantial right" as "the evidence was merely cumulative and unnecessary because it would not have affected the result of the case in the least."

The mere fact that the trial was concluded in one sitting only is not necessarily indicative of irregularity or inordinate haste. If all the evidence needed by both parties could be presented by them in that single session, there is no reason why any resetting had to be made.

As for the circumstance that the defense counsel turned out later to be a non-lawyer, it is observed that he was chosen by the accused himself and that his representation does not change the fact that Elesterio was undeniably carrying an unlicensed firearm when he was arrested. At any rate, he has since been represented by a member of the Philippine bar, who prepared the petition for habeas corpus and the appellant's brief. [9]

The Court agrees, however, that Judge Enrique Agana was exceptionally careless, if not deliberately high-handed, when he immediately after the trial dictated his decision in open court. One may well suspect that he had prejudged the case and had a prepared decision to foist upon the accused even before the submission of the case. And what is worse is that the decision was wrong.

The elements of the offense punished by General Order No. 6 in relation to Par. 2, Presidential Decree No. 9, as amended, are first, the carrying of a firearm outside one's residence, and second, the motive for such act, which is "in furtherance of or to abet, or in connection with subversion, rebellion, insurrection, lawless violence, criminality, chaos or public disorder."

A reading of the information filed against the accused will readily show that the second element of the imputed crime is not alleged at all. All that is averred is that Elesterio, on the date and place indicated, had in his possession and was carrying outside his residence a firearm and two live bullets without the proper permit or authorization. That is only the first element. There is no allegation in the information that the accused was carrying the weapon outside his residence for the purposes mentioned in the laws supposedly violated.

This omission was all too obvious, and it is a wonder that the trial judge did not see it at all. Perhaps he did not choose to see it. In any event, it is clear that the accused could not have been convicted of a violation of General Order No. 6 in relation to P.D. No. 9, par. 2, and so should not have been sentenced to the severe penalty of life imprisonment.

But all this notwithstanding, the accused-appellant is not entirely guiltless. For, although his act is not punishable under the laws invoked by the prosecution, it is undeniable that it comes under the provision of Section 2692 of the Revised Administrative Code, as amended by Rep. Act No. 4, for illegal possession of firearms.

This provision reads as follows:

SEC. 2692. Unlawful manufacture, dealing in, acquisition, disposition, or possession of firearms, or ammunitions therefor, or instrument used or intended to be used in the manufacture of firearms or ammunition. - Any person who manufactures, deals in, acquires, disposes, or possesses, any firearm, parts of firearms, or ammunition therefor, or instrument or implement used or intended to be used in the manufacture of firearms or ammunition in violation of any provision of sections eight hundred and seventy-seven to nine hundred and six, inclusive, of this Code, as amended, shall, upon conviction, be punished by imprisonment for a period of not less than one year and one day nor more than five years, or both such imprisonment and a fine of not less than one thousand pesos nor more than five thousand pesos, in the discretion of the court. If the article illegally possessed is a rifle, carbine, grease gun, bazooka, machine gun, submachine gun, hand grenade, bomb, artillery of any kind or ammunition exclusively intended for such weapons, such period of imprisonment shall not be less than five years nor more than ten years. A conviction under this section shall carry with it the forfeiture of the prohibited article or articles to the Philippine Government.

The possession of any instrument or implement which is directly useful in the manufacture of firearms or ammunition on the part of any person whose business or employment does not deal with such instrument or

implement shall be "prima facie" proof that such article is intended to be used in the manufacture of firearms or ammunition.

Under this provision, mere possession of an unlicensed firearm is *malum prohibitum* and is punishable regardless of lack of criminal intent or proof of the ownership of the firearm by another person. Even if it were not, the accused in the case at bar still has not been able to explain his possession of the revolver short of the unsupported statement that it had been handed to him by one Ray Arong who, by his own testimony, was a casual acquaintance he had met only two days earlier. He does not even explain why he received the gun when it was for no apparent reason shoved on him by the said Arong.

It is well-settled that the nature and cause of the accusation are determined not by the name given to the offense but by the description of the manner and circumstances in which it was committed. The designation of the offense or of the law violated is a conclusion of law made by the prosecuting officer but this is not binding on the court. That conclusion must ultimately be made only by the court itself after the trial and following its own ascertainment of the facts needed to constitute the elements of the crime attributed to the accused. If an essential element is not alleged to prove a graver crime, no conviction therefor may be rendered. Conversely, if the elements proved constitute a less serious offense, conviction therefor is justified although it is the higher offense that is alleged. In other words, it is the recitals of the facts of the commission of the offense, and not the nomenclature of the offense, that should determine the crime being charged in the information.[10]

Of particular relevance is the case of *People v. Mamogay*,[11] where the failure of the information to allege that the murder had been committed with the use of an illegally possessed firearm removed it from the coverage of P.D. No. 9 in relation to G.O. No. 6. Nevertheless, the recitals in the information were specific enough to justify the conviction of the accused under Section 2692 of the Revised Administrative Code for illegal possession of firearms.

The information in the case at bar contained allegations (later established at the trial) which were sufficient to warrant the conclusion that the offense committed by the accused was violation of Section 2692 of the Revised Administrative Code as amended. He should therefore have been meted the penalty prescribed therein, not the sentence of life imprisonment for violation of the presidential decree.

The prescribed penalty is imprisonment for a period of not less than one year nor more than five years and a fine of not less than P1,000.00 nor more than P5,000.00 in the discretion of the court. The recommendation of the Solicitor General, considering the facts and circumstances of this case, is "an indeterminate penalty of imprisonment from three years and one day as minimum to five years as maximum and a fine of P3,000.00, deducting from the sentence such period of detention, if any, to which the accused may be entitled." But since the records show that he has been under detention since 1983, or for more than the maximum sentence imposable on him, there is no question that he is entitled to be released immediately upon payment of the fine, as an indispensable part of the penalty, which we hereby fix at P1,000.00.

WHEREFORE, the accused is declared guilty of Illegal Possession of Firearms under Section 2692 of the Revised Administrative Code as amended. Inasmuch as he has been detained for more than the maximum period of imprisonment imposable for the offense, he is hereby ordered released immediately upon payment of the fine of P1,000.00.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 41; 47.

[2] Original Records, p. 15.

[3] Ibid., p. 32.

[4] Rollo, p. 50.

[5] Ibid., pp. 50-51.

[6] Id., p. 51.

[7] Id., p. 5.

[8] 64 Phil. 399.

[9] Rollo, pp. 32-37; Rollo (G.R. No. 63971 - Habeas Corpus), p. 39.

[10] US v. Treyes, 14 Phil. 270; US v. Lim San, 17 Phil. 273; Oca v. Judge Jimenez and Inocentes, 115 Phil. 420.

[11] 114 SCRA 900.

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