

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. MAXIMIANO ASUNCION, AS PRESIDING JUDGE, BRANCH 104, REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, QUEZON CITY, AND R...

G.R. No. 80066. May 24, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for review on certiorari of the Resolution issued by the respondent Judge on 1 September 1987, which dismissed the Information filed in Criminal Case No. Q-53382 of the Regional Trial Court, NCJR, Quezon City, entitled: "People of the Philippines, plaintiff, versus Rolando Abadilla, accused," for Violation of Pres. Decree No. 1866 (Illegal Possession of Firearms and Ammunition), and the Order issued on 25 September 1987, which denied petitioner's motion for reconsideration of said Resolution.

On 30 July 1987, Rolando Abadilla, a former colonel of the Armed Forces of the Philippines, was charged before the Regional Trial Court, NCJR, Quezon City, with the offense of Violation of Pres. Decree No. 1866 [Illegal Possession of Firearms and Ammunition) in an Information, docketed therein as Criminal Case No. Q-53382, which reads as follows: "The undersigned Assistant City Fiscal accuses ROLANDO ABADILLA of the crime of Violation of Presidential Decree No. 1866, committed as follows:

"That on about 27th day of July 1987, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, wilfully, unlawfully and feloniously have in his possession and under his custody and control the following:

"a. Sterling Assault Rifle, SMG 9mm, MK5, L34A1. No. 1024 SN-Defaced

b. Armalite Rifle, M16 SN-RP137912

c. Carbine, Cal. 30 M2, SN-1052937

d. Cal 357 Revolver, Smith & Wesson SN-187K589

e. Cal 45. Pistol, Colt. SNO-70G26301

f. Ammunitions and magazines described as follows:

1. Two thousand pcs. (2,000) of Cal. 5.56 mm ammos;
2. Seventy-four (74) rds of Cal. 50 ammos;
3. Thirty (30) rds of Cal. 9mm ammos;
4. Twenty-eight (28) rds of Cal. 30 ammos;
5.
Five (5) rds of 20 gauge ammos;
6. Two hundred-ninety (290) pcs of spent shells for Magnum 44 and 38 Special;
7. One hundred sixty-six (166) slugs for Magnum 44;
8. One (1) pc magazine for Sterling Rifle (long);
9.
One (1) pc magazine for M16 rifle (long); and
10. One (1)pc magazine for Carbine rifle (long).

without first securing the necessary license and/or permit from the lawful authority."[1]

Upon motion of the accused, the respondent judge, as aforestated, in a Resolution dated 1 September 1987, dismissed the Information on the ground that it did not allege sufficient facts to constitute an offense, since the possession of loose firearms and explosives is not illegal perse, in view of Executive Order No. 107 which gives holders or possessors of unlicensed firearms and ammunition a period of six (6) months from its effectivity, extended to 31 December 1987 by Executive Order No. 222, within which to surrender the same to the proper authorities, without incurring any criminal liability therefor, except if the unlicensed firearm or ammunition is carried outside of one's residence, not for the purpose of surrendering the same, or used in the commission of any other offense, and there is no allegation in said Information that the firearms and ammunition enumerated therein were carried outside the accused's residence or used in the commission of some other crime. In support thereof, the respondent judge cited the decision in *People vs. Lopez*, 79 Phil. 658.[2]

The prosecution filed a motion for reconsideration of said Resolution, but the motion was denied in an Order dated 25 September 1987.[3]

Hence, the present recourse by the prosecution.

- The petitioner claims that the respondent judge erred in holding that the possession of loose firearms and explosives is not illegal joerse during the period covered by Executive Orders Nos. 107 and 222. The petitioner argues that nothing is contained in said executive orders which legalizes the possession of firearms and ammunition without a permit: that said executive orders merely authorized holders or possessors of unlicensed firearms and ammunition to surrender the same within a specified period without incurring criminal liability; and that illegal possession of firearms and ammunition is still penalized under Pres. Decree No. 1866 which was not repealed by said Executive Order Nos. 107 and 222.

It may be true that there is nothing in Executive Orders Nos. 107 and 222 that expressly legalizes the unlicensed possession of firearms and ammunition, but this Court, applying statutes[4] similar to the executive orders in question, and which also provided for a period within which a holder or possessor of unlicensed firearms and ammunition may surrender the same to the proper authorities without incurring criminal liability, had ruled that a criminal liability was temporarily lifted for mere possession of unlicensed firearms and ammunition during the period covered, although such person is not exempt from criminal liability if, within the period provided, he carries the firearm and ammunition (unless it is for the purpose of surrendering the same) or he commits any other offense with the use of such unlicensed firearm and ammunition. Thus, in *People vs. Lopez*,[5] the Court said:

"Section 1 of Republic Act No. 4, which is the last enactment on the subject, makes it unlawful to manufacture, dispose, sell, acquire, possess, etc., firearms and ammunition. However, this provision was qualified by Section 2 which is as follows:

'SEC. 2. The provisions of the foregoing section to the contrary notwithstanding, any person in possession of any of the prohibited articles therein mentioned, may, without incurring any criminal liability, surrender the same to such officer and within such period of time as the President shall by proclamation designate and fix immediately upon the approval of this Act: Provided, however. That this section shall not be interpreted to mean as in any way exempting from such liability any person, without the requisite license, found, within the aforementioned period of time, making use of any of said articles, except in self-defense, or carrying them on his person except for the purpose of surrendering them as herein required: Provided, further. That this section shall not in any way affect any case pending in court, on the date of the passage of this Act. for violation of section twenty-six hundred and ninety-two of the Revised Administrative Code; and Provided, lastly, That the President may authorize any officer or agency of the Government to issue to the persons surrendering their firearms temporary licenses therefor for period not exceeding three months at a time."

"In pursuance of this provision the President issued Proclamation No. 1, dated July 20, 1946, fixing August 31, 1946, as the last day in the provinces of Luzon on which to surrender articles described in Section 1 without incurring criminal liability.

"It will be seen that Section 2 excluded from the operation of section 1 up to August 31. 1946. possession of firearms and ammunition so long as they were not used for any purpose other than self-defense or carried for any purpose other than of surrendering them to the proper authorities. The Government does not dispute this interpretation. Although the law does not categorically state that criminal liability was temporarily lifted for mere possession of firearms and ammunition, that is the only construction compatible with the spirit and purposes of the enactment as revealed by its context."

Moreover, in *People vs. Feliciano*,[6] the Court ruled that Republic Act No. 482 legalized mere unlicensed possession of firearms and ammunition for the limited period specified in said law, and punished only (1) the use of unlicensed firearm or ammunition, or (2) the carrying of such firearm or ammunition on the person, except to surrender them. The Court said:

"In the early morning of June 10. 1950. Constabulary Sergeant Roman Arao conducted a search in the house of

Francisco Mamba located in the poblacion of Tuao, Cagayan, in the course of which be found under the pillow of the appellant a revolver, caliber .45, with three rounds of ammunition. It is not necessary to take up appellant's argument that there is absolutely no proof that he had no permit or license to possess the articles in question, because the other contention that the appellant is not liable in view of Republic Act No. 482, is correct. This Act, in section 1, provides that an unlicensed holder or possessor of any firearm or ammunition may, without incurring criminal liability, surrender the same within the period of one year from the date the Act took effect (June 10, 1950), but that such unlicensed holder or possessor is not exempted if found within said period making use of the firearm and ammunition or carrying them on his person except for purposes of surrender. The statute, in effect, legalizing mere unlicensed possession for a limited period, punishes only (1) using a firearm or ammunition or (2) carrying the same on the person except to give them up. The appellant was not charged with any of these two acts."

This ruling was reiterated in *People vs. Tabunares*,^[7] wherein the Court said:

"In the very recent case of *People vs. Feliciano* (supra, p. we ruled that Republic Act No. 482, approved on June 10, 1950, in effect legalized mere unlicensed possession within one year from said date, and punished only (1) the use of a firearm or ammunition or (2) the carriage thereof on the person except for purpose of surrender. Appellant's conviction cannot stand, since it is rested solely on unlicensed possession on or about November 6, 1950."

Executive Order No. 107, as amended by Executive Order No. 222, is similar to Republic Acts Nos. 4 and 482. We are not prepared, nor are we justified, to give it a different meaning because there is no basis for such a difference.

- The petitioner claims that it was not necessary for the prosecution to allege in the information that the firearms and ammunition, subject matter of this case, were brought out of the residence of the accused or were used by him in the commission or another offense, since these circumstances are not essential ingredients of the crime of illegal possession of firearms and ammunition.

The contention is without merit. In *People vs. Lopez*,^[8] the Court already ruled that, under Republic Act No. 4, the use or the carrying of firearms and/or ammunition was an ingredient, if not the sole ingredient, of the offense: i.e., the very acts which were punished, subject to certain conditions, and hence, should be alleged and proved.

In *People vs. Austria*,^[9] the Court also ruled that in order that an information charging illegal possession of firearm and ammunition, under Republic Act No. 482, may be deemed sufficient, it must allege that the accused was using the unlicensed firearm or carrying it in his person at the time he was apprehended by the authorities with said firearm. Said the Court:

"It should be noted that the court dismissed the first case for illegal possession of firearm upon the sole ground that the information did not contain facts sufficient to constitute an offense. Bear in mind that information was filed in connection with Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless the firearm is used or carried in his person by the possessor. And we already held in a recent case that in order that an information under that Act may be deemed sufficient it must allege that the accused was using the unlicensed firearm or carrying it in his person at the time he was caught by the authorities with the unlicensed weapon (*People vs. Santos Lopez y Jacinto*, G.R. No. L-1603, November 29, 1947, 79 Phil. 658). And these essential allegations not having been averred in the information, the court rightly dismissed the case on the ground that the information did not allege facts sufficient to constitute an offense."

The cases of *U.S. vs. Chan Toco*,^[10] *People vs. Cadabis*,^[11] and *People vs. San Juan*^[12] cannot be successfully invoked by the petitioner. The law involved in the case at bar is not of the same class of laws involved in said cases which referred to violation of the Opium Law and the Election Code. In *People vs. Lopez*,^[13] the Court

said:

"Courts and text writers are not in exact agreement on when the prosecution must negative the exceptions in a penal law: that is, when 'it is necessary to state in the indictment that the defendant does not come within the exceptions, or to negative the provisos it contains.' In U.S. vs. Chan Toco (12 Phil. 262), the Court discussed this question and pertinent authorities at length. It reached the conclusion, in prosecution for smoking opium, that 'where one is charged with a violation of the general provisions of the Opium Law, it is "more logical as well as more practical and convenient." if he did in fact smoke opium under the advice of a physician, that he should set up this fact by way of defense, than that the prosecution should be called upon to prove that every smoker, charged with a violation of the law, does so without such advice or prescription.'

"However, that point is not here. The law involved in the case at bar is not of the class of laws referred to in the foregoing decision. The matters which the information now before us has failed to allege were not exceptions to a provision defining an offense. They were not such exceptions as under the U.S. vs. Chan Toco doctrine should have been averred or proved as a defense. Under Republic Act No. 4, the use or the carrying of firearms and/or ammunition was an ingredient, if it was not the sole ingredient, of the offense, the very acts which were punished subject to certain conditions. It has been seen that mere possession or custody of any of the articles specified in the act within the time designated in the proclamation, was not illegal unless the possessor made use of them or carried them on his person. What the accused could have been obliged to allege and prove, if he had been prosecuted for using or carrying on his person a firearm, was that he defended himself with the arm or was on his way to give it up, as the case might be."

- Finally, the petitioner contends that under the allegation in the information "that the accused without any authority of law, did then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control the firearms and ammunition enumerated therein," the prosecution may prove that the accused carried the firearms and ammunition outside of his residence.

The contention is without merit. As the Court had stated in *People vs. Austria*,^[14] the presentation of evidence "cannot have the effect of validating a void information, or proving an offense which does not legally exist, xxx The information was not merely defective but it does not charge any offense at all. Technically speaking, that information does not exist in contemplation of law." The Court is not unaware that accused-respondent Abadilla, rightly or wrongly, is identified with the violent arm of the past regime. To many, he is regarded with unusual ease and facility as the "hit man" of that regime.

The Court, however, is not swayed by appellations or opprobriums. Its duty, as a temple of justice, is to accord to every man who comes before it in appropriate proceedings the right to due process and the equal protection of the laws.

The information, in this particular charge against accused-respondent Abadilla, is fatally defective. It would be fatally defective against any other accused charged with the same offense. Respondent judge, in dismissing the information, committed no reversible error or grave abuse of discretion. He acted correctly.

WHEREFORE, the petition is DENIED. The orders appealed from are hereby AFFIRMED. Without costs.

SO ORDERED.

Yap, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Bidin, Cortes, Griño-Aquino and Medialdea, JJ., concur.

Feliciano and Sarmiento, JJ., took no part.

[1] Rollo. p. 27.

[2] Id., p. 23.

[3] Id., p. 26.

[4] Republic Acts Nos. 4 and 482.

[5] Supra.

[6] 92 Phil. 688.

[7] 92 Phil. 800.

[8] Supra.

[9] 94 Phil. 987.

[10] 12 Phil. 262.

[11] 97 Phil. 829.

[12] 130 Phil. 513.

[13] Supra.

[14] Supra

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