

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO DELA ROSA Y AVILES, ANTONIO DELA ROSA Y AVILES, AND RODOLFO QUIMSON Y NAVA (AT LARGE), ACCUSED-APPELLANTS.

G.R. No. 84857. January 16, 1998

Ponente: PUNO, J.

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PUNO, J.:

Rodolfo dela Rosa y Aviles appeals the decision of the Regional Trial Court, First Judicial Region, Branch 38, Lingayen, Pangasinan, convicting him of illegal possession of firearms and explosives and imposing the penalty of reclusion perpetua.[1]

On January 27, 1987, an information for illegal possession of firearms and explosives was filed against RODOLFO DELA ROSA y AVILES, ANTONIO DELA ROSA y AVILES, CRESENCIO REYES y DELA CRUZ and RODOLFO QUIMSON y NAVA, to wit:

"That on or about the 9th of December 1986, in sitio (sic) Kadampat, Barangay Bolo, municipality (sic) of Labrador, province (sic) of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovementioned accused, conspiring, confederating and helping one another, did then and there wilfully (sic), unlawfully and feloniously have in their possession, custody and control three (3) homemade gauge 12 shotguns and fourteen (14) pieces of dynamite explosives, without first securing the necessary permit/license to possess the same.

"Contrary to Presidential Decree No. 1866." [2]

All accused pleaded not guilty when arraigned on February 3, 1987. On March 12, 1987, the four accused withdrew their plea of not guilty and substituted it with a plea of guilt. After ascertaining that the plea of guilt was not made improvidently, the lower court imposed upon them the corresponding penalty.[3] However, on March 19, 1987, the four (4) accused filed a motion withdrawing their plea of guilt.[4] The lower court granted the motion in a resolution dated March 25, 1987.[5] Thereafter, trial proceeded. However, accused Cresencio Reyes changed his mind again and pleaded guilty to a lesser offense punishable under the last paragraph of Section 1 of Presidential Decree No. 1866. The court accepted the plea and sentenced him accordingly. He was utilized as a witness by the prosecution. The trial proceeded against the three remaining accused.

The prosecution established that in the morning of December 9, 1986, Rodolfo dela Rosa, Antonio dela Rosa, Cresencio Reyes and Rodolfo Quimson, surrendered to Kagawad Valeriano Rigor of Sitio Kadampat, Bolo, Labrador, Pangasinan claiming they want to lead a new life. They informed him that Benjamin Nano, alias Kumander Tamang, a member of the New People's Army (NPA), was shot by one of them. The four had with them a short shotgun (Exhibit A) and a bag containing several sticks of dynamite (Exhibit C to C-7).[6] Kagawad Rigor offered them breakfast and afterwards went to the police station to report the presence of four (4) surrenderees in his house. At the police station, Patrolman Gasline Fernandez recorded the report in the police blotter. Cpl. Crispin Cancino, the station commander, brought along several policemen and proceeded to the

house of Kagawad Rigor. When the group arrived, only Kagawad Rigor and Cpl. Cancino entered the house. The other policemen stayed outside to secure the area. Inside the house, Kagawad Rigor introduced the surrenderees to Cpl. Cancino and showed him the short shotgun (Exhibit A) and the bag (Exhibit C to C-7) containing several sticks of dynamite. Then, all accused, except Rodolfo Quimson, who was left behind to guide the police in recovering the body of Kumander Tamang, were brought to the Philippine Constabulary (PC) Headquarters in Lingayen. In Lingayen, they proceeded at the municipal building and called on Mayor Calixto Pancho. The surrenderees had their picture taken with Mayor Pancho and Kagawad Rigor. Afterwards, they were brought to the police headquarters, where their statements were taken by Cpl. Arsenio Paragas and Cpl. Cipriano Castillo.[7] Meanwhile, the charred body of Benjamin Nano was recovered by the police in Sitio Tebel Patar.[8]

The following day, Cresencio Reyes informed the police that there were firearms left buried in Sitio Tebel Patar. Reyes pointed to the hiding place which was covered by banana leaves. When the banana leaves were removed, the police unearthed two (2) long barreled shotguns (Exhibits B and D).[9]

On the other hand, the three accused contend they were recruited by Kumander Tamang on different dates. Accused Rodolfo dela Rosa testified that he first saw Kumander Tamang on October 28, 1986 at a relative's wake. Kumander Tamang asked him whether he owned a piece of land. He said he did not, for he was only a sawali maker. Kumander Tamang then convinced him to join the New People's Army (NPA). He told Kumander Tamang he would think it over. On November 1, 1986, Kumander Tamang went to his house and reiterated his offer to him. Cresencio Reyes was with Kumander Tamang at that time. Reyes was carrying a bag (Exhibit C) while Kumander Tamang had a shotgun (Exhibit A). On November 10, 1986, Kumander Tamang went to his house and succeeded in persuading him to join the NPA. Kumander Tamang brought him at a hideout in the mountains of Sitio Tebel Patar, Labrador, Pangasinan.

On the evening of November 14, 1986, Rodolfo dela Rosa, Kumander Tamang and Cresencio Reyes, descended the mountains and proceeded to the house of Antonio dela Rosa, who was Rodolfo's cousin. At that time, Kumander Tamang was carrying a shotgun (Exhibit A) while Reyes was carrying a bag (Exhibit C). When they arrived at said place, Kumander Tamang and Reyes entered the house and stayed inside for ten (10) minutes. When the two came out, dela Rosa was with them. All of them headed for the mountains afterwards. On November 20, 1986, Rodolfo dela Rosa, Kumander Tamang Cresencio Reyes and Antonio dela Rosa went to the house of Rodolfo Quimson. Again, only Kumander Tamang and Reyes entered Quimson's house. They stayed inside for 15 minutes. When the two came out, Quimson was with them. Afterwards, they returned to their hideout in the mountains.[10]

On December 8, 1986, at 10:00 o'clock in the morning, Kumander Tamang called them to a meeting. Kumander Tamang took the bag (Exhibit C) which Reyes always carries and opened it. The bag yielded several sticks of dynamite. Kumander Tamang told them that at five o'clock in the afternoon they would go down Sitio Kadampat and assassinate Kagawad Rigor.[11] He then instructed them on how to use the explosives. After the meeting, they returned to their hut and rested. At two o'clock in the afternoon, they heard a gunshot from the hut of Kumander Tamang. They rushed outside and saw Reyes holding Kumander Tamang's shotgun. He announced that Kumander Tamang was dead. He told them it would be better to surrender themselves to the authorities. He ordered them to gather the shotgun and the sticks of dynamite while he set on fire Kumander Tamang's hut. At five o'clock in the afternoon, they descended the mountains and headed towards Sitio Kadampat. At 7:00 a.m., the following day, they reached the house of Kagawad Rigor. They saw the Kagawad sitting by himself on a bench outside his house. Only Reyes approached the Kagawad, so as not to frighten him. The three others waited by the roadside. After five (5) minutes, Reyes signalled the three to approach the house. Kagawad Rigor let them inside the house and offered them breakfast. Reyes placed the shotgun and the bag on top of the dining table. Kagawad

Rigor then left the house and went to the police station.[12] He returned with several policemen. At first, the policemen pointed their guns at the accused but Kagawad Rigor told them there was no need for they were surrendering themselves to the authorities. Kagawad Rigor then showed the policemen the shotgun and the bag containing the sticks of dynamite. The policemen took all the surrenderees to the Municipal Hall, except Rodolfo Quimson, who was left behind, to lead the police to Kumander Tamang's body. At the Municipal Hall, Mayor Calixto Pancho greeted and congratulated them for coming back to the fold of law. They had their picture taken with Mayor Pancho and Kagawad Rigor. Afterwards, they were brought to the police headquarters. When an investigator started to question them, they asked for a lawyer to assist them but the investigator said they would not need one for they were surrenderees and would soon be freed. Hence, they gave their subscribed statements to the police. After their statements were taken, the police took them back to the police station in Labrador, where they were detained. On January 5, 1987, they were transferred to the provincial jail in Lingayen. They denied ever seeing the two (2) long firearms (Exhibits C and D) which were recovered in Sitio Tebel Patar. They saw said firearms for the first time when the prosecution presented them as exhibits during the trial.[13]

When trial concluded, the lower court convicted the three (3) accused. Antonio dela Rosa did not appeal [14] while Rodolfo Quimson escaped[15] from the National Bilibid Prisons (NBP) where he was detained after the lower court convicted him. Only Rodolfo dela Rosa appealed contending that:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT RODOLFO DELA ROSA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS AND EXPLOSIVES, DEFINED AND PENALIZED UNDER THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866.

We find merit in the appeal.

It is undisputed that accused-appellant Rodolfo dela Rosa and his companions were the ones who surrendered the subject firearm (Exhibit A) and explosives (Exhibit C to C-7) to Kagawad Rigor. However, Rodolfo dela Rosa denies that he was in possession of said ammunitions in the manner punishable by law. According to him, his real intention was merely to turn over the ammunitions, which were owned by Kumander Tamang, to the authorities. The trial court perceived otherwise. It declared that since Rodolfo dela Rosa joined the New People's Army (NPA), there is reason to conclude that he provided himself with arms such as Exhibits A, B, C to C-7 and D.[16] And since mere possession is sufficient to convict a person for crimes which are *malum prohibitum* like illegal possession of firearms, appellant dela Rosa must be convicted. It is of no moment that he surrendered the ammunitions to the authorities.

We fail to see how appellant dela Rosa could be convicted of illegal possession of firearms based on the above reasoning. Section 1 of Presidential Decree No. 1866 punishes any person who shall "x x x unlawfully manufacture, deal in, acquire, dispose or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition." (Underscoring supplied) [17]

Broken down into its salient elements, illegal possession of firearms is committed when the holder thereof:

- (i) possesses a firearm; and
- (ii) lacks the authority or license to possess it.[18]

In *People v. de Gracia*,[19] we clarified the meaning of possession for the purpose of convicting a person under PD 1866, thus:

"But, is the mere fact of physical or constructive possession sufficient to convict a person for unlawful

possession of firearms or must there be an intent to possess to constitute a violation of the law? This query assumes significance for illegal possession of firearms is a *malum prohibitum*, punished by a special law, in which case good faith and absence of criminal intent are not valid defenses.

"When a crime is punished by a special law, as a rule, intent to commit the crime is not necessary, it is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime but he intended to commit an act, and that act is by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.

In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused. Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent."

In the early case of *People v. Estoista*,^[20] we held that a temporary, incidental, casual, or harmless possession of firearms is not punishable. We stated therein that:

"The terms "control" and "dominion" themselves are relative terms not susceptible of exact definition, and opinions on the degree and character of control or dominion sufficient to constitute a violation vary. The rule laid down in the United States courts - rule which we here adopt - is that temporary, incidental, casual or harmless possession or control of a firearm is not a violation of a statute prohibiting the possessing or carrying of this kind of weapon. A typical example of such possession is where "a person picks up a weapon or hands it to another to examine or hold for a moment."

Also, in *People v. Remereta*,^[21] where the question posed was whether an accused who stole a firearm could simultaneously be prosecuted for theft and illegal possession of firearms, we held that transient possession is not sufficient to convict one under the latter crime, thus:

"While in stealing a firearm the accused must necessarily come into possession thereof, the crime of illegal possession of firearms is not committed by mere transient possession of the weapon. x x x Thus, stealing a firearm with intent not to use but to render the owner defenseless, may suffice for purposes of establishing a case of theft, but would not justify a charge for illegal possession of firearm, since intent to hold and eventually use the weapon would be lacking."

Hence, the kind of possession punishable under PD No. 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same.^[22] It is not enough that the firearm was found in the person of the accused who held the same temporarily and casually or for the purpose of surrendering the same. Admittedly, *animus possidendi* is a state of mind. As such, what goes on into the mind of an accused, as his real intent, could be determined solely based on his prior and coetaneous acts and the surrounding circumstances explaining how the subject firearm came to his possession.^[23]

Thus, in *People v. Leo Lian*,^[24] we rejected the argument of the accused that the charge against him should be dismissed because there was no *animus possidendi* on his part. In said case, the accused contended that he was on his way to the municipal hall to surrender the firearm when he met some of his friends. He then forgot about the firearm, until the police officer unceremoniously seized the same from him, affording him no chance to surrender

it himself.

In rejecting accused-appellant's claim, Justice Regalado wrote that:

"x x x, the Court finds it hard to believe that appellant still had to hide the firearm in his waist before setting out to surrender it to the authorities when he could have taken the gun to the town hall in the same bag in which he found it, in which case it would have been safer and would have avoided detection. In fine, the indispensable elements of possession without the necessary authority or license and the corresponding attendance of animus possidendi have both been convincingly established by the prosecution to warrant appellant's conviction x x x."

That animus possidendi is determinable from the prior and simultaneous acts of the accused is further exemplified by *People v. Lubo*.^[25] In this case, while accused-appellant pleaded lack of animus possidendi, his conduct belied the same. Accused-appellant Lubo was found to have secured a "temporary license" for the subject firearm. Under such circumstance, we held that accused-appellant intended to possess the subject firearm beyond reasonable doubt.

Coming now to the case before us, it is undisputed that the police officers never really arrested Rodolfo dela Rosa, for the truth of the matter was that there was no need for such arrest. Dela Rosa and his companions had surrendered the ammunitions to Kagawad Rigor even before the police arrived. In fact, the police learned of the surrender because Kagawad Rigor reported it to the police station in Labrador. This is in contrast to *People v. Leo Lian*, where appellant Lian merely feigned intention to surrender the firearm which the police found in his possession. In the case at bar, appellant dela Rosa's intention to surrender the ammunitions was very clear from the beginning and he was able to execute the same.

Corollarily, the Office of the Solicitor General's contention that dela Rosa was in constructive possession of the ammunitions is irrelevant for possession -whether physical or constructive- without animus possidendi is not punishable. Dela Rosa's possession was harmless, temporary and only incidental for the purpose of surrendering the ammunitions to the authorities. Consequently, the prosecution failed to establish the first element of animus possidendi.

Similarly, the records are bereft of sufficient proof that Rodolfo dela Rosa possessed the ammunitions without authority to do so. Except for the preliminary examination of Pfc. Cipriano P. Castillo conducted by Municipal Circuit Trial Judge Benjamin N. Abella,^[26] the prosecution offered no other evidence during the trial which showed lack of license. In the preliminary examination, the only relevant question asked by the judge was:

"JUDGE ABELLA

"Q: Did you or the Stn. Commander ask or verify whether any or all of the above-named suspects have any license to possess the above-mentioned firearms and explosives?

"A: Yes, sir. But they stated that they have no license to possess any of the firearms and explosives which were recovered from their possession, control and custody."

The Office of the Solicitor General offers the extrajudicial statement of accused Rodolfo dela Rosa^[27] that Kumander Tamang supplied him with explosives and dynamite in furtherance of subversive activities.^[28] According to the Solicitors, the extrajudicial statement is sufficient to prove that the firearms were illegally possessed. The presumption is erroneous. Aside from the fact that dela Rosa repudiated the extrajudicial statement because it was uncounselled,^[29] the same did not contain any admission that he had no license to possess the firearm. And, even if it had contained an admission that he had no license, it still would not have sufficed.

In *People v. Solayao*,^[30] the prosecution relied only on the testimonial evidence that accused-appellant admitted

before the police officer who accosted him that he did not have any authority or license to carry the subject firearm when he was asked if he had one. In acquitting the accused-appellant, we stressed that the prosecution has the burden of proving beyond reasonable doubt the lack of license which is a negative averment.[31] The burden is in consonance with the evidentiary rule that "when a negative is averred in a pleading, or a plaintiff's case depends upon the establishment of a negative, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative." [32] More importantly, the burden placed on the shoulders of the prosecution to prove beyond reasonable doubt the lack of license is premised on the constitutional presumption of innocence of the accused.[33] Thus, in *People v. Solayao*, this Court suggested that the prosecution could have, at the very least, presented a certification from the Firearms and Explosives Unit that the accused did not have the license to the gun. But, an extrajudicial admission of the accused, solely, will not suffice.

The Office of the Solicitor General contends that for accused-appellant to join the New People's Army and stay in the mountains without arming themselves is highly improbable. Thus, there is reason to believe that they illegally possessed the ammunitions to further their subversive activities even prior to surrendering them to the authorities. We reiterate that mere suspicion will not prove the prosecution's case in court. In a prosecution under Presidential Decree No. 1866, it is incumbent on the Government to prove both elements of the crime: (1) that the accused possessed the firearm and (2) that he had not first obtained a license or permit from the appropriate authorities.[34]

As always, mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. The rule is the same whether the offenses are punishable under the Revised Penal Code which are mala in se or in crimes which are malum prohibitum by virtue of special law.[35] We find that such quantum of proof was not adequately presented in this case.

IN VIEW WHEREOF, accused-appellant Rodolfo dela Rosa is acquitted in Criminal Case No. L-3616. His immediate release from the National Bilibid Prisons (NBP) is ordered, except if charged and detained for other offenses.

SO ORDERED.

Regalado, (Chairman), Mendoza, and Martinez, JJ., concur.

[1] Decision, p. 11; Rollo, p. 193.

[2] Original Record, p. 30.

[3] Original Record, p. 42; Rollo, p. 138.

[4] The four (4) accused pleaded guilty under the impression that they will be eligible for Amnesty under Executive Order No. 107. Thus, they withdrew their plea when informed that they were not qualified for said Amnesty. Original Record, p. 48.

[5] Original Record, pp. 54-55.

[6] The trial court noted that the bag presented in court contained five (5) live dynamite wrapped with black electrical tape, three (3) brown wrapping paper and one (1) empty shell of a shotgun. TSN, July 7, 1987, p. 7.

[7] Exhibit "F", "G", "H", "I", Original Record, pp. 5-12.

[8] TSN, Cpl. Crispin Cancino, July 7, 1987, p. 15.

[9] TSN, Valeriano Rigor, September 9, 1987, pp. 6-9.

[10] TSN, Antonio dela Rosa, October 26, 1987, pp. 4-5.

[11] TSN, Rodolfo dela Rosa, October 8, 1987, pp. 3-14.

[12] Ibid, p. 8.

[13] TSN, Rodolfo Quimson, October 9, 1987, pp. 2-12.

[14] Rollo, pp. 137, 140, 145.

[15] Rollo, p. 145.

[16] Decision, p. 10; Rollo, p. 192.

[17] Presidential Decree No. 1866 (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) as amended by Republic Act No. 8294 on June 6, 1997 providing for a scheme of penalties, depending on the classification of the firearm illegally possessed.

[18] *People v. Caling*, 208 SCRA 827 (1992).

[19] 233 SCRA 716, 725, 727 (1994).

[20] 93 Phil. 647 (1953).

[21] 98 Phil. 413 (1956).

[22] See also *People v. Soyang*, L-13983, December 31, 1960.

[23] *Supra* note 19, at 727.

[24] *People v. Leo Lian*, G. R. No. 115988, March 29, 1996.

[25] *People v. Lubo, et al.* 101 Phil. 180, 183 (1957).

[26] Original Record, pp. 17-18.

[27] Exhibit "H", Rollo, pp. 23-24.

[28] Appellee's Brief, p. 10; Rollo, p. 215.

[29] Accused-appellant contends that they asked for the assistance of counsel when the police started to question him. However, Cpl. Cancino stated he does not need a lawyer for he was a surrenderee and will soon be freed. Appellant's Brief, p. 11; Rollo, p. 170.

[30] 262 SCRA 256 (1996).

[31] See also *People v. Evangelista*, 256 SCRA 624 (1996); *People v. Ramos* 222 SCRA 557 (1993); *People v. Fajardo* 17 SCRA 494 (1966).

[32] *Supra* note 30 at 265, citing V. Francisco, *Evidence* 13, 1973 ed.

[33] See also *People v. Arce*, 227 SCRA 420 (1993).

[34] People v. Caling, 208 SCRA 827 (1992).

[35] People v. Argawanon, 231 SCRA 614 (1994); People v. Quijada, G.R. Nos. 115008-09, July 24, 1996.

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