

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO GUEVARRA Y CAPILLAN, ACCUSED-APPELLANT.

G.R. No. 87223. July 19, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Danilo Guevarra was charged before the Regional Trial Court of Manila, Branch XX,[1] with the violation of Presidential Decree No. 1866, allegedly committed as follows:

"That on or about April 14, 1987, in the City of Manila, Philippines, the said accused did then and there willfully and unlawfully keep, possess and/or acquire one (1) revolver Cal. 22 (Paltik) with eight (8) rounds of cal. 22 live ammunitions without first securing the necessary permit and/or license therefor from the proper authorities."[2]

Upon arraignment, appellant pleaded not guilty to the crime charged. The trial court, however, after an evaluation of the evidence presented, found the accused guilty as charged and sentenced him to suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua, with costs de oficio. The firearm and ammunition were ordered confiscated in favor of the Government.[3]

The prosecution's version of the facts of the case is synthesized by the trial court as follows:

"x x x Rodrigo Hilario in the statement taken by the police alleges that around 6:00 of April 14, 1987, he came from his brother Gregorio Hilario at Gerona St., Tondo. While he was going home, the accused Danilo Guevarra tagged along with him and confronted Rodrigo Hilario with the statement as to whether he was 'siga', meaning brave. That time, the accused was holding a firearm. Rodrigo Hilario answered the accused that he was not brave. At that instant, the accused was apprehended by Pat. Rizalde Gascon and Pat. W. Reyes of WPD, Manila, upon the complaint of Rodrigo Hilario, who was threatened by said accused Danilo Guevarra with a firearm (pistol). Pat. Gascon testified that this Rodrigo Hilario sought his help regarding the person with a gun at Dandan St., Tondo, Manila on April 14, 1987. Consequently, he arrested the suspect, the accused Danilo Guevarra. Likewise he testified that there was an attempt to settle the case between accused and complainant Rodrigo Hilario. But in view of the firearm taken from the accused, already marked as Exh. D and the live ammunition Exh. D, the case was not settled. As a matter of fact, the handle of the firearm bears identification mark as DCG which stands for Danilo C. Guevarra. On cross-examination by Atty. Liberato Cabaron, CLAO, counsel for accused, the witness maintained that he arrested the accused Danilo Guevarra upon the complaint of Rodrigo Hilario."[4]

On the other hand, the defense narrates a different version:

"x x x The accused testified on direct examination by Atty. Cabaron, CLAO, that in the house of Rodrigo Hilario, a gambling known as Lucky 9 was held on April 14, 1987 in the evening. There were ten persons who were gambling. Thereafter, there was trouble. Then, a certain Eddie got mad because he was chased by a certain Mang Diego who turned out to be Rodrigo Hilario. Mang Diego (Rodrigo Hilario) lifted a chair and was about to hit a certain Eddie who got mad, then this accused Danilo Guevarra pacified Mang Diego or

Rodrigo Hilario. In his attempt to pacify Rodrigo Hilario, accused Danilo Guevarra was able to hit Rodrigo Hilario and he boxed the said Rodrigo Hilario and left the house of Rodrigo Hilario. Later on, a certain Jetjet fetched the accused telling him that his wife arrived. This Jetjet was later on identified as Cornelia Calilong Halili. They boarded a tricycle in fetching his wife. While inside the tricycle, a Patrolman came over and hit him with a gun at the back of the side car. This patrolman turned out to be Pat. Gascon and the accused testified further that he was mauled while being arrested by Pat. Gascon. The accused at that moment while being mauled testified furthermore, that he did not say anything against Pat. Gascon. Later on, the accused was brought to Precinct I, North Bay, Tondo. While inside Precinct I, WPD, Jetjet, alias Cornelia Calilong Halili shouted, 'what is the fault of my companion', referring to accused Danilo Guevarra. At that instant, Rodrigo Hilario followed the accused to the police, Precinct I. Pat. Gascon asked accused what case and the accused told him the quarrel with Mang Diego or Rodrigo Hilario on April 15, 1987. Accused further testified that Pat. Gascon asked P1,000.00 so that he can be released. Accused answered that he has no money. So, the case was filed on April 20, 1987. Likewise, the accused testified that Pat. Gascon used to be in the house of Rodrigo Hilario, the complainant. That was the reason why accused came to know Pat. Gascon. On cross-examination, Fiscal Hernandez was able to elicit from the accused that accused has no job and during the date of the incident he was only about one month old in the City of Manila as he came from Iloilo. His only job is gambling or playing Lucky 9 in the house of Rodrigo Hilario."[5]

Accused-appellant raises the following assignment of errors in this appeal:

1. The court a quo gravely erred in convicting the accused-appellant despite the effectivity of Executive Order No. 107 which made the information fatally defective and void;
2. The court a quo gravely erred in convicting the accused-appellant when the prosecution failed to prove the alleged absence of license or permit, assuming but not admitting that the firearm and the ammunition were in his possession;
3. Assuming but not admitting that the accused-appellant was in possession of the firearm and ammunition, the court a quo gravely erred in admitting the same in evidence as these were taken in violation of the constitutional right of the accused-appellant against unreasonable searches and seizures; and
4. The court a quo gravely erred in not finding that the accused-appellant was a victim of a frame-up.[6]

Appellant's plea for reversal is well-taken. Adopting the same view, the Solicitor General, filing a manifestation and motion in lieu of appellee's brief, recommends that this case filed against appellant in Criminal Case No. 87-54006 be dismissed as the same is premised on a void information.

At the time of the commission of the crime, or on April 14, 1987, Executive Order No. 107, dated December 24, 1986, which gave holders and possessors of unlicensed firearms and ammunition a period of six (6) months from its date of effectivity within which to surrender the same to the proper authorities without incurring criminal liability therefor, was indeed in legal force and effect. In fact, its effectivity was extended to December 31, 1987 by Executive Order No. 222. While said executive orders did not have the effect of legalizing the unlicensed possession of firearms and ammunition, they did temporarily lift criminal liability for such unauthorized possession.[7]

Executive Order No. 107, however, is not without exceptions, since it does not bar prosecution of a person for illegal possession of loose or unlicensed firearms, ammunition or explosives if the same are carried outside his residence, unless it is for the purpose of surrendering the same as evidenced by a prior written authority issued by the proper official to transport the same for said purpose, or if he commits an offense with the use of said unlicensed firearm, ammunition or explosive.

The pivotal inquiry, therefore, boils down to these propositions: Assuming that appellant was indeed in possession

of the firearms and ammunition, is it necessary for the prosecution, in order to make appellant liable for the offense, to allege in the information that appellant either brought the same out of his residence not for the purpose of surrendering them or that he used them in the commission of another offense? Corollarily, if neither of the exceptions were alleged in the information, may they be proved just the same during the trial?

The cited case of *People vs. Asuncion, etc., et al.*, ante, has already provided the answers to these queries in this manner:

"x x x In *People vs. Lopez* (79 Phil. 658 [1947]), 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* (94 Phil. 897 [1953]), 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. x x x" (Citations in parentheses added).

It bears noting that the laws referred to in the above-mentioned cases, Republic Acts Nos. 4 and 482, likewise provided as exceptions wherein criminal liability would attach (1) the use of a firearm or ammunition or (2) the carrying thereof by the person except for the purpose of surrendering the same.

With regard to the corollary question, the *Asuncion* case disposed of this by reiterating the rule that the presentation of evidence cannot have the effect of validating a void information, or proving an offense which does not legally exist. Where, as in this case, the information is not merely defective, but it does not charge any offense at all, technically speaking, that information does not exist in contemplation of law.

On the foregoing considerations, we no longer find it necessary to rule upon the other errors assigned by appellant.

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE, without prejudice to the filing of the proper information in this case. Let a copy of this decision be furnished the Honorable Secretary of Justice for his information and appropriate action.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Presided over by Judge Doroteo Caneba.

[2] Rollo, 6.

[3] Ibid., 21.

[4] Ibid., 17-18.

[5] Ibid., 18-19.

[6] Brief for Accused-Appellant, 1; Rollo, 40.

[7] *People vs. Asuncion, etc., et al.*, 161 SCRA 490 (1988).

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