

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANGELITO CALING @ LITO, ACCUSED-APPELLANT.***G.R. No. 94784. May 08, 1992*

Ponente: NARVASA, C. J.

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The refusal of a driver to move his truck to allow another to pass a narrow street, which the operator of the second vehicle took to be an act of insolent indifference to a colleague, as well as the irrational anger of the latter's companion at such an act, are what have resulted in the former's violent demise and the consequent proceedings at bar.

The material events took place in Zone I, San Mariano, Isabela, at about 11 o'clock in the evening of August 2, 1989, and for the most part are not in serious dispute. At that place and time, Emerchon Pua, a truck driver, was drinking beer and gin in front of his house, together with Marcelino Alindayu, and four others. Emerchon's brother, Raymundo Pua, was also there. It was while they were thus occupied that another truck driver, Angelito Caling, arrived at the place, driving his own vehicle, a 2 1/2 ton, 6 x 6 truck. In the truck with Caling was Felino Neri, a nephew of Caling's employer, a person named Boy Go. Caling's truck could not pass the road leading to his employer's house because two of Emerchon's own trucks, were blocking the way. Caling asked Emerchon to move his trucks, but the latter said, "Sorry, the truck won't start." Obviously irritated, Caling then roughly backed up his truck and took another road to his employer's residence.

Not long afterwards, while at his employer's house, Caling heard one of Emerchon's trucks being started. Believing they had been lied to and unnecessarily inconvenienced, Caling and Felino Neri decided to confront Emerchon. Neri had with him an M-14 rifle. On the way to Emerchon's house, they were seen by Elpidio Ancheta who asked them if anything was wrong. The answer was that their truck had not been allowed to pass, or words to that effect.

Caling and Neri saw Emerchon in his truck. Caling forthwith went up the stepping or running board of the vehicle and said to him: "Putang ina mo, pare, umaandar pala; sabi mo hindi umaandar, para kang hindi logger, pareho tayo lahat loggers." Emerchon replied that the truck really would not start earlier, and he was unaccountably able to start it then, "only by chance." Evidently unsatisfied with Emerchon's explanation, Caling tried to grab the key or the steering wheel from Emerchon. But after a short while Caling was pulled down from the truck by Emerchon's brother, Raymundo Pua, and some of those who had been drinking with Emerchon. Emerchon also alighted.

At this point, two shots were heard from the rear of the truck, after which Caling's companion, Felino Neri, ran towards Emerchon stating the obvious, that he had a rifle. Caling allegedly told Neri, "Banatan mo na, pare." Neri then fired at Emerchon, hitting him below the chest, on the left side of the abdomen. Emerchon Pua started to fall. His brother, Raymundo took hold of him, placed him in the truck and rushed him to the Isabela Provincial Hospital at Ilagan, Isabela. Nothing could however be done for Emerchon. He expired from the bullet wounds

inflicted on him, numbering two, according to the physician who conducted the post-mortem examination.

The Provincial Fiscal filed with the Regional Trial Court at Ilagan, Isabela, an information charging Caling and Neri with “qualified illegal possession of firearm used in murder” under Republic Act No. 1866.[1] The information alleged that:

- 1) Caling and Neri had “in their possession and under their control and custody an M-14 rifle;”
- 2) they had not however “first ** obtained the necessary permit and/or license therefor” and hence were “not ** allowed or authorized by law to keep, possess and carry firearm;”
- 3) using said firearm, they did “assault, attack and shoot ** one Emerchon M. Pua, inflicting upon him gunshot wound which directly caused his death;” and
- 4) they did so in conspiracy, and with “evident premeditation and treachery.”

Only Caling was arraigned and stood trial. Felino Neri eluded arrest and, as far as the record shows, has not been apprehended to this day.

The facts just narrated were deemed to have been established beyond reasonable doubt by the Trial Court on the basis of the testimony of four (4) witnesses, namely: Raymond Pua and Marcelino Alindayu, eyewitnesses to the shooting; Elpidio Ancheta, who saw Caling and Neri going to and coming from Emerchon Pua’s house after gunshots had been heard; and Dr. Conrado Ancheta, who attested to the death of the victim. The fourth and only other witnesses of the prosecution, Flordeliza Pua, Emerchon’s widow, deposed only as regards the damages suffered by her as a result of her husband’s demise.

Caling, who was the sole defense witness, testified that he had indeed gone back to Emerchon’s house on hearing Emerchon starting one of his trucks, precisely to question him about his earlier professed inability to move his trucks. He claims however that instead of getting a satisfactory answer, Emerchon’s companions began to maul him, and desisted only after some gunshots were heard; that he saw Emerchon sitting on the ground, saying he had been hit. He left the place and went to his employer’s house, followed by Felino Neri who was running. Caling denies ever having said to Neri “Banatan mo na, pare,” that it was in fact one of Emerchon’s companions who had uttered those words, addressed to one of his friends who was armed with a pistol.

As already stated, the Trial Court found Caling’s guilt of the crime, as co-conspirator, to have been proven beyond reasonable doubt, but that the killing could not be characterized as murder but only as homicide, since there was no adequate proof of the qualifying circumstance of evident premeditation or treachery. It rendered judgment on June 28, 1990 convicting Caling “as co-principal of the special complex crime of Illegal Possession of Unlicensed Firearm Used in Homicide as provided for and defined under the 2nd paragraph of Sec. 1 of P.D. 1866 as amended.” Caling was accordingly “sentenced to a penalty of reclusion perpetua and to indemnify the heirs of the offended party the sum of P45,000.00.” The case in so far as concerned Felino Neri was “archived pending his arrest.”

From this sentence Caling has appealed to this Court and here attributes to the Trial Court the following errors:

- 1) failing to perceive that “the evidence for the prosecution ** failed to establish all the essential elements of the crime charged;” and
- 2) “finding accused-appellant guilty beyond reasonable doubt of the special complex crime of illegal possession of unlicensed firearm used in homicide.”

The Solicitor General agrees with these basic propositions and opines that the appellant should be acquitted,

“without prejudice to the filing of an Information for Murder or Homicide, as the case may be, against appellant for the death of Emerchon M. Pua, if none has as yet been filed.”[2]

It seems that the Court a quo did indeed err in believing that there is such a thing as “the special complex crime of Illegal Possession of Unlicensed Firearm Used in Homicide as provided for and defined under the 2nd paragraph of Sec. 1 of P.D. 1866 as amended,” and declaring Caling guilty thereof. The legal provision invoked, “Sec. 1 of P.D. 1866, as amended,” reads as follows:

“SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. -- The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.”

What is penalized in the first paragraph, insofar as material to the present case, is the sole, simple act of a person who shall, among others, “unlawfully possess any firearm ** (or) ammunition **.” Obviously, possession of any firearm is unlawful if the necessary permit and/or license therefor is not first obtained. To that act is attached the penalty of reclusion temporal, maximum, to reclusion perpetua. Now, if, “with the use of (such) an unlicensed firearm,” a “homicide or murder is committed,” the crime is aggravated and is more heavily punished, with the capital punishment.

The gravamen of the offense in its simplest form is, basically, the fact of possession of a firearm without license. The crime may be denominated simple illegal possession, to distinguish it from its aggravated form. It is aggravated if the unlicensed firearm is used in the commission of a homicide or murder under the Revised Penal Code. But the homicide or murder is not absorbed in the crime of possession of the unlicensed firearm; neither is the latter absorbed in the former. There are two distinct crimes that are here spoken of. One is unlawful possession of a firearm, which may be either simple or aggravated, defined and punished respectively by the first and second paragraphs of Section 1 of PD 1866. The other is homicide, or murder, committed with the use of an unlicensed firearm. The mere possession of a firearm without legal authority consummates the crime under PD 1866, and the liability for illegal possession is made heavier by the firearm’s use in a killing. The killing, whether homicide or murder, is obviously distinct from the act of possession, and is separately punished and defined under the Revised Penal Code.

The use of an unlicensed firearm in the perpetration of a homicide or murder gives rise to the crime of unlawful possession in its aggravated form, not the “special complex crime” of illegal possession with homicide or murder. A prosecution for unlawful possession under PD 1866 can only result, assuming evidence of guilt to be adequate, in a conviction for unlawful possession, simple or aggravated, not for homicide or murder.

The next question is whether or not in light of the evidence on record, a conviction of Caling may be justified as co-principal in the crime of illegal possession of an unlicensed firearm, aggravated by its use in a killing, within the meaning of PD 1866.

The elements of the offense of what may be denominated “simple illegal possession” under PD 1866 are two: (a) possession of a firearm or ammunition, and (b) lack or absence of prior license or permit to possess the same. In a prosecution for this offense, therefore, it is incumbent on the Government to prove, not only that the accused was in possession of a firearm -- in this case, an M-14 rifle, but also that said accused had not first obtained a license or permit therefor from the appropriate authorities.

Notable in the proofs of the prosecution is (1) the absence of any evidence to establish that Neri's possession of the rifle was unlawful; i.e., no license or permit had been first obtained therefor; and (2) the absence of the rifle itself.

Of course, the actuality of Felino Neri's possession of a rifle, supposedly an M-14, cannot but be conceded, in view of the evidence. There is, however, nothing in the record by which a conclusion of whether that rifle is unlicensed or not -- and therefore unlawfully possessed or not -- may be drawn. Given this indisputable circumstance, it is not possible to find either Neri or Caling guilty of unlawful possession of the weapon. If the crime of simple unlawful possession of firearm cannot be ascribed to Caling or Neri, a fortiori, the offense of unlawful possession in its aggravated form cannot be imputed to them.

The absence of proof of that negative fact is easily explained. It is due not only to what the Solicitor General describes as the undue preoccupation of the prosecution "to establish conspiracy in the killing of the victim," but also to the absence of the rifle itself. That weapon, as earlier observed, has not been recovered from either suspect, and therefore has not been presented in evidence; and this has effectively closed the door to any proof of the negative fact that no license or permit therefor has been issued to either Neri or Caling.

Since in the present state of the evidence it is not rationally possible to make a conclusion that the M-14 rifle in question was unlawfully possessed and, consequently, it is not legally possible to pronounce a verdict of conviction under PD 1866 against either Caling or Neri, and it appearing that neither of them is charged with homicide or murder under the criminal code, it is therefore useless to inquire into the issue of whether or not Caling is culpable, as co-principal or otherwise, in Neri's act of homicide or murder, as the case may be, on the basis of Caling's purported statement to Neri, "Banatan mo na, pare," and the other acts shown to have been done by him on the occasion of the killing.

Whether or not, as the Solicitor General intimates, a charge of homicide or murder lies against either Caling -- or his companion, Felino Neri, who is at large -- is a question that the Court will not answer at this time.

WHEREFORE, the judgment of the Regional Trial Court at Ilagan, Isabela (Branch 18) in Criminal Case No. 1202, dated June 28, 1990, is REVERSED and SET ASIDE, and the accused-appellant, Angelito Caling @ Lito, is ACQUITTED, with costs de officio.

SO ORDERED.

Cruz, Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] The action thus initiated was docketed as Crim. Case No. 1202 and assigned to Branch 18.

[2] "Manifestation and Motion in Lieu of Appellee's Brief" filed by the Solicitor General under date of June 6, 1991: Rollo, pp. 56, 75

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