

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONITO MACAGALING Y ATILLANO, ACCUSED-APPELLANT.

G.R. Nos. 109131-33. October 03, 1994

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-109131-33/>

REGALADO, J.:

On July 19, 1991, two separate informations were filed against accused-appellant Leonito Macagaling y Atillano for the crimes of murder and homicide and, on October 29, 1991, for an additional charge of illegal possession of a firearm and ammunition, which were docketed as Criminal Cases Nos. 1814, 1815 and 1834, respectively, before the Regional Trial Court, Branch 81, Romblon, Romblon.[1]

Assisted by counsel de parte, appellant pleaded not guilty when arraigned in Criminal Cases Nos. 1814 and 1815 on August 28, 1991.[2] Likewise, appellant pleaded not guilty when arraigned in Criminal Case No. 1834 on May 28, 1992.[3] The three cases were thereafter consolidated and jointly tried under the continuous trial system.

On September 14, 1992, the lower court rendered its decision on the aforesaid three indictments with the following dispositions:

"WHEREFORE, this Court finds the accused LEONITO MACAGALING Y ATILLANO GUILTY beyond reasonable doubt of the crimes of:

1) Homicide under the Information, dated July 19, 1991, in Criminal Case No. 1814, and sentences him to an indeterminate prison term of from TEN (10) years and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of reclusion temporal, as maximum, with the accessory penalties therefor. The accused is ORDERED to pay the heirs of DENNIS MACAGALING the following amounts:

- a) P50,000.00 as indemnity for death and
- b) P34,000.00 as actual damages

without subsidiary imprisonment in case of insolvency, and to pay the costs.

2) Homicide under the information, dated July 19, 1991, in Criminal Case No. 1815, and sentences him to an indeterminate prison term of from EIGHT (8) YEARS AND ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, with the accessory penalties therefor. The accused is ORDERED to pay the heirs of the deceased TEOTIMO FAMERONAG the following amounts:

- a) P50,000.00 as indemnity for death;
- b) P64,000.00 as actual damages; and
- c) P350,000.00 by way of lost earnings

without subsidiary imprisonment in case of insolvency, and to pay the costs.

3) Illegal Possession of Firearm and Ammunition under the Information, dated October 29, 1991, in Criminal Case No. 1834, and sentences him to suffer the penalty of reclusion perpetua, and to pay the costs.

The .38 caliber revolver (Smith and Wesson original without serial number) (Exh. E); the five (5) empty shells (Exhs. E-1 to E-5); and the live bullet (Exh. E-6) are confiscated in favor of the government.

After the judgment has become final, the Clerk of Court is ordered to deliver and deposit the foregoing Exhibits E, E-1 to E-6, inclusive, to the Provincial Director, PNP, of the Province of Romblon properly receipted. Thereafter, the receipt must be attached to the record of the case and shall form part of the record.

The period of preventive imprisonment the accused had undergone shall be credited in his favor to its full extent and the penalties herein imposed shall be served successively in accordance with Articles 29 and 70, respectively, of the Revised Penal Code."^[4]

The prosecution's version of the incident, as culled from the testimony of its witnesses in open court, is to the effect that in connection with the barangay fiesta of Calabasahan, Concepcion, Romblon, a coronation ball was held in the evening of May 2, 1991 at the public plaza. Present on said occasion, among others, were Antonieto Fabella, barangay captain of San Pedro, Concepcion, Romblon; Anita Macagaling, mother of the deceased Dennis Macagaling; Pfc. Roque Fesalbon, investigator of the local police station; and Roger Lacambra, stepson of Teotimo Fameronag.

At about 10:00 P.M., the aforesaid Antonieto Fabella, who was also the brother-in-law of Dennis Macagaling, was watching the festivities when all of a sudden he noticed Leonito Macagaling point and then fire a gun at his own nephew, Dennis Macagaling. The bullet missed Dennis but wounded Teotimo Fameronag on the right chest causing the latter to collapse in front of Dennis. Dennis, on his part, tried to escape from Leonito by running away from the scene.^[5]

At this juncture, Anita saw that her son Dennis was running in a wobbly manner and she embraced him to prevent him from falling. Leonito grabbed the hair of Dennis and yanked his head, pulling the latter away from his mother. Anita pleaded to Leonito saying, "Don't, Leonito," but the latter pointed the gun at the temple of Dennis and shot him point-blank. Dennis fell down ("sumubasob") on the cement floor. Leonito then shot the prostrate Dennis three times successively on the neck, uttering the expletive "Putang ina mo," and then tried to leave the vicinity.^[6]

At that very moment, Pfc. Roque Fesalbon was at the barangay tanod outpost near the plaza, having been dispatched by his station commander to maintain peace and order there. Hearing a gunshot, he immediately went out to investigate and, on his way, he saw Teotimo Fameronag fall down on the floor of the plaza. He proceeded to the place of the incident and saw Dennis Macagaling lying on the floor while Leonito Macagaling was holding a firearm. At that time, he had with him his service pistol and he was also holding an M16 armalite rifle. Sensing that Leonito was about to flee, he fired three warning shots to prevent him from doing so. Initially, Leonito refused to hand over his gun but he later relented. Together with Pfc. Sofronio Fabregas, Fesalbon arrested Leonito and took him to the latter's house which was near the scene of the incident. Fesalbon inspected the gun which he had retrieved from Leonito and found five empty shells and one live bullet. The serial number of the gun had been erased.^[7]

Meanwhile, Roger Lacambra, a stepson of Teotimo Fameronag and a member of a dance group, also heard the gunshots. He noticed that people were screaming and scampering away from the dance hall. Wanting to know the cause of the commotion, he went near the dance hall and saw Fameronag staggering towards him. Fameronag fell down on the floor and asked for his help. With the assistance of his co-dancers, he brought Fameronag to a

hospital in Pinamalayan, Oriental Mindoro and, later, to the provincial hospital of Calapan where the latter expired.[8]

On the other hand, after talking to Leonito Macagaling in the latter's residence, Fesalbon decided to go back to the crime scene to proceed with the investigation. He verified that Fameronag had one gunshot wound while Dennis was shot four times. He also found out that the motive of the killing might have been Leonito's suspicion that Dennis was divulging information about the former's participation in illegal fishing. It appears that Leonito was previously charged with illegal fishing but the case was later dismissed.[9]

According to Anita Macagaling, her family incurred funeral and burial expenses in the sum of P15,000.00. For their trips to and from Corcuera, they spent P2,000.00 for herself and their witnesses' transportation, aside from P19,000.00 incurred as litigation expenses.[10] On the other hand, Concepcion Vda. de Fameronag, testified that she spent P40,000.00 for the burial and the wake of her deceased husband, and incurred litigation, transportation and other incidental expenses in the sum of P31,500.00.[11]

As was to be anticipated, the defense had a different account of the incident. Rosauro Fabreag, Jr. testified that between 5:30 to 6:00 P.M. of the same day, he saw Dennis Macagaling, together with Nonoy Fabellon, Roger Lacambra and two others whose names he does not know, drinking in a store near his house. Dennis asked him to join them and he accepted the invitation. While they were drinking, Dennis showed him a gun tucked on his waist. At about 6:00 P.M., after having taken a couple of drinks, he decided to leave the group which appeared to be very drunk at that time.[12]

William Ferrancullo, a barangay tanod of Calabasahan and a relative of appellant, was also called to testify for the defense. He averred that in the evening of May 2, 1991, he and other barangay officials were assigned by Barangay Captain Feras to oversee the proceedings and maintain peace and order at the plaza. At about 9:30 o'clock that evening, he was at the gate and there he noticed a group of five apparently drunken men enter the dance hall.[13]

Later, he decided to go to the barangay tanod outpost located a few meters from the gate. Abruptly, he heard a gunshot coming from the direction where the intoxicated persons were seated. Rushing towards that area to investigate, he met Teotimo Fameronag who appeared to have been shot. He saw Fameronag fall to the floor and it was then that he noticed Dennis Macagaling holding a gun and threatening to shoot anyone who would come near him. Frightened, he did not move from the spot where he was standing.[14]

While all these things were happening, appellant Leonito Macagaling claims that he was in his residence at Calabasahan, getting ready to rest for the night. He was startled when he heard a gunshot coming from the direction of the plaza. Still in his short pants and undershirt, he hurried to the plaza and saw the group of Dennis Macagaling, Willy Ferrancullo, Willito Bruit, and Carlito Macagaling. He approached them and when he was about two meters from the group, he became aware of Dennis Macagaling who was intoxicated and holding a gun. Leonito asked Dennis to drop the gun but the latter retorted, "Isa ka pa." Without warning, Dennis fired at him but missed. Leonito dashed towards Dennis and tried to wrestle the gun away from him. A struggle for the firearm ensued and they grappled for it on the floor. While they were thus wrestling for the gun, it went off and hit Dennis. Leonito then stood up, went home, and informed his wife of what had just happened.[15]

Leonito's wife, after observing that he had some bruises, proceeded to clean them. Shortly thereafter, policemen Roque Fesalbon and Sofronio Fabregas, together with Ferrancullo, arrived and inquired if the gun was his. He denied ownership of the firearm. Informed by them that Dennis was dead, Leonito said it was not his fault. The policemen then left.[16]

Fesalbon, Fabregas and Ferrancullo thereafter went back to the crime scene and decided to bring Fameronag, then still alive, to Pinamalayan for treatment. There being no doctor then available in the barangay, the body of Dennis Macagaling was examined by a rural health midwife, Avemie F. Fabroa, who submitted her medical findings.[17]

Queried as to what might have motivated the deceased Dennis Macagaling to harbor any ill feelings against him, Leonito recounted an incident that took place in October, 1990 when he slapped Diomedes, the younger brother of Dennis Macagaling. It appears that Leonito and Diomedes had a previous agreement that the latter would work in the former's fishing operations. Due to Diomedes' commitment to work for him, Leonito advanced him some money but, much to his dismay, Diomedes decided to join another group. Leonito waited for Diomedes along the shore to demand an explanation. An argument ensued and Leonito slapped Diomedes when the latter cursed him. Having learned of the slapping incident ten days later, Dennis confronted Leonito. There was a heated exchange of words between them, with Dennis later warning him, "You watch out." [18]

Seeking to discredit Pfc. Fesalbon's testimony, Leonito told the court that Fesalbon had reason to hate him. He claimed that in 1976, due to an incident in a dance hall at Sampong, Calabasahan, he filed an administrative case against Fesalbon, Luvizmino Fabroa and Sofronio Fabregas before the National Police Commission. In retaliation, Fesalbon filed a criminal case for less serious physical injuries against him. However, both cases were dismissed after they decided to settle the matter among themselves.[19] Appellant opined that Pfc. Fesalbon continued to hold a grudge against him.

1. In a long line of cases, it has been held that where the accused admits the killing of the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in legitimate defense of himself.[20] As the burden of proof is shifted to him, he must consequently rely on the strength of his own evidence and not on the weakness of that of the prosecution. Accordingly, the proverbial bone of contention with respect to a killing under such circumstances, is whether or not the accused has presented sufficient evidence to support his claim of self-defense.[21]

A careful analysis of appellant's version and a thorough evaluation of the evidence presented by the parties fail to persuade this Court to rule in appellant's favor.

For one, Leonito's version of the incident appears to be too good to be true. Leonito was confronted by an armed Dennis Macagaling who apparently was prepared to shoot him. In addition, he and Dennis did not exactly part as good friends when they last saw each other. In fact, the latter had threatened him to "watch out." Despite all these, Leonito is supposed to have nonchalantly directed Dennis to hand over his gun. Not heeding his order, Dennis fired at him, whereupon Leonito heroically rushed towards Dennis and tried to wrestle the gun away from him, seemingly unconcerned for his safety. And then, after Dennis was shot "accidentally" while they were wrestling for the gun, Leonito just calmly got up and went home, as if nothing had happened.

If, as Leonito asserted, he had tried to get Dennis to hand over the gun because he was even concerned that an innocent bystander might be hurt, it baffles the Court why he did not immediately rush his own nephew Dennis to the hospital for medical care and attention when the latter was shot. It is a most unusual reaction for one who had accidentally shot another to just leave the vicinity with the victim unattended to or without even making arrangements for his care. Furthermore, as will hereafter be discussed, the number of wounds sustained by the victim completely demolishes this theory of accidental shooting.

Principal defense witness William Ferrancullo, who was presented in court obviously to corroborate the version of appellant, miserably failed to do so. He is one witness the defense could have done without, for this star witness could not seem to get his story straight, conveniently changing his testimony to suit his purpose at the particular moment, without taking into consideration the statements he had previously made, some instances of which we

shall illustrate.

For example, Ferrancullo earlier testified that when he was asked by Pfc. Roque Fesalbon as to who started the trouble, he pointed to Leonito Macagaling as the culprit.[22] Later, however, he insisted that he did not inform the policemen as to what he knew, giving the flimsy reason that "there was no chance for us to talk." [23] How he could justify that excuse is beyond comprehension since he himself asserted that he was all the while with the policemen when they went to appellant's residence after the shooting and he also tagged along when they went back to the scene of the crime where they conducted further investigations.

Evidently, Ferrancullo had definite knowledge that Leonito was a suspect in these cases. His statements, however, would show that he does not have the uncanny knack for lying and getting away with it. In an earlier testimony, he said it was only on July 2 or 5, 1992, when so informed by the wife of Leonito, that he came to know that Leonito was a suspect in the cases.[24] Yet, he subsequently admitted that as early as June, 1992, he had visited Leonito at the provincial jail where the latter was detained because of the killings in question.[25]

The trial court, posing clarificatory questions, asked Ferrancullo about the persons to whom he had confided what he knew about the case. He said he first narrated the incident to his mother who lives in the mountains of San Pedro on the morning of May 3, 1991.[26] Pressed further by the court, he amended that by saying that he had informed his wife thereof after he left the dance hall of that fateful night. He also told Atty. Ferrancullo about the incident in November, 1991 and, naturally, when he testified in court. Asked if he told any other person, he said there was none. Later, he claimed that he also told Leonito's wife.[27]

The court, not satisfied with the answers it was getting from the witness, inquired why Ferrancullo, being a barangay tanod, did not tell the barangay captain who had assigned him at the plaza as to what he knew. This time, Ferrancullo suddenly recalled that, from Leonito's house, he did in fact go to the barangay captain's house purposely to inform the latter of the incident.[28]

Ferrancullo's propensity for prevarication is further demonstrated by his varying accounts as to the wounds sustained by the victim. First, he asserted that while Leonito and Dennis were grappling for the gun, he heard only two shots[29] which meant that Dennis could have sustained only two gunshot wounds at the most. Thereafter, he said that he was sure that the victim sustained one shot on the head and three on the neck, having been present when the photographs of the cadaver of Dennis was taken. Later, he changed his mind, stating that the victim suffered only one wound on the neck and one on the head.[30]

This brings us to the matter of the number of wounds sustained by the victim, which physical evidence is vital since it could lend credence to appellant's claim of self-defense. However, as earlier stated, appellant's version and concomitant claim of self-defense is belied and negated precisely by the number of wounds sustained by the deceased and the location thereof. Appellant maintains that while both he and Dennis were struggling for control of the gun, the same accidentally fired, hitting the latter. If indeed the firing of the gun was merely accidental and it fired only once, it would be impossible for Dennis to sustain four gunshot wounds, one in the temple and three in the neck.[31] Furthermore, the number of wounds indicate that the act was no longer an act of self-defense but a determined effort to kill the victim.[32] Such wounds are indicative of aggression and confirm the theory of the prosecution that appellant assaulted the deceased.[33]

Considering the grave contradictions in Ferrancullo's testimony on issues of serious importance, this Court agrees with the court a quo which, after chronicling twelve instances undermining the credibility of said witness, trenchantly concluded that "the principal witness of the defense, William Ferrancullo, did not see the incident that evening or if he did, he narrated it differently." [34]

In his brief, appellant makes an issue of the fact that although Antonieto Fabella categorically testified in court that it was Leonito Macagaling who shot and killed Dennis Macagaling, he did not mention their specific names in his affidavit. This argument is misleading and specious, to say the least. A careful perusal of said affidavit shows that when asked to narrate what happened, Fabella indeed did not refer to the parties involved by their given names. However, immediately after said narration, he was asked whether he knew their names and he answered in the affirmative, giving their first and family names.[35]

Appellant, in his desperate bid for acquittal, even questions the fact that the lower court, instead of granting his own counsel's motion for a postponement, appointed Atty. Cesar M. Madrona of the Public Attorney's Office as counsel de oficio. Appellant asserts that, in doing so, the trial court deprived him of his constitutional right to be represented by a counsel of his choice. We reject this pretension.

The records show that appellant was given the right to choose his own counsel. However, the court in its desire to finish the case as early as practicable under the continuous trial system made appropriate arrangements to avoid unnecessary delay and postponements of the trial in case of the absence of appellant's counsel de parte. Thus, in its December 12, 1991 order, the trial court set out the specific dates for the presentation of the prosecution witnesses, noting that the prosecution witnesses were all from the far-flung island municipality of Concepcion in Maestre de Campo Island, Romblon, which is about seven hours away by boat. It also advised appellant of the availability of Atty. Madrona as counsel de oficio any time Atty. Sancho Ferancullo was not available. Appellant was properly forewarned that any legal maneuvers meant to unduly delay these cases would not be entertained by the court.

Furthermore, after the presentation of the prosecution witnesses, Atty. Ferancullo took over the conduct of the defense of appellant. Thus, in all stages of the trial, his own counsel was in charge except when the prosecution witnesses were testifying. The Court, after a review of the records, agrees with the Solicitor General's position that "with the demonstrated strength of the prosecution evidence, it is unlikely that Atty. Ferancullo's presence during the entire proceedings would have materially affected the result of the cases." [36]

Appellant would discredit the prosecution witnesses by adverting to the fact that, except for Pfc. Roque Fesalbon, they are all very close relatives of the victims.[37] A witness' relation to the victim does not necessarily mean that he is biased. There is absolutely nothing in our laws to disqualify a person from testifying in a criminal case in which said person's relative is involved, if the former was really at the scene of the crime and was a witness to the execution of the criminal act. Precisely, being blood relatives of the deceased, these witnesses would not just indiscriminately impute the crime to anybody but would necessarily identify and seek the conviction of the real culprit himself to obtain justice for the death of their relative.

Still bent on assailing the credibility of the prosecution witnesses, appellant cites alleged inconsistencies in their testimonies. Firstly, Antonieto Fabella had testified that when he heard the first gunshot, Leonito was inside the dance hall of the barangay plaza.[38] On the other hand, appellant claims that Roger Lacambra testified that he saw Leonito on the street at that time. This is, of course, not an inconsistency on the part of Fabella since the supposed variant version was made by a different witness, Lacambra. Just to satisfy appellant, however, we have verified from the transcripts that what Lacambra said was that he saw Leonito on the street before the first shot was fired, to wit:

"Q: If you heard the first shot while you were on your way, you did not see Leonito before the first shot, am I correct?

A: I saw him.

x x x

Q: Where was Leonito?

A: He was in the street."[39]

A second flaw, according to appellant, is the fact that Fabella testified that he heard Fesalbon fire two warning shots,[40] whereas Fesalbon declared that he fired three times.[41] This is clearly an insignificant and minor detail which would not affect the credibility of the witnesses' testimonies. As long as the witnesses concur on the material points, slight differences in their remembrance of the details do not reflect on the essential veracity of their statements,[42] more so where the trivial issue is the number of shots one hears from rapid gunfire.

Thirdly, appellant insists that Fabella testified that when appellant was running away from the crime scene after the incident, Fesalbon and Fabregas blocked his path while Fesalbon stated that he was alone when he approached the suspect. However, nowhere in his testimony did Fesalbon state that he alone blocked the path of Leonito. In fact, when queried as to what he did with appellant after he got the gun from him, Fesalbon answered, "We arrested him,"[43] thereby affirming the fact that he was not alone at that time but that Fabregas was working in concert with him.

On the charge of homicide for the killing of Teotimo Fameronag, appellant did not offer any defense. When Ferrancullo was asked if he knew who killed Fameronag, he said he did not know.[44] Neither did appellant offer any explanation on the death of Fameronag despite the positive statements of the prosecution witnesses that while trying to shoot Dennis, appellant instead hit Fameronag. The only defense, then, of appellant for the death of Fameronag is a complete denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime,[45] especially where, as in these cases, such denial is unexplained and is contradicted by eyewitnesses.

For the death of Dennis Macagaling, although the information in Criminal Case No. 1814 charges the felony of murder qualified by treachery and aggravated by evident premeditation, the People's evidence does not prove the attendance of these circumstances. They cannot, therefore, be appreciated against appellant and the lower court correctly convicted him of homicide in Criminal Case No. 1814.

For the killing of Teotimo Fameronag, the same cannot be said to be accidental as it was the result of an aberratio ictus, or miscarriage of the blow. As a matter of law, since such death resulted from a culpable aberratio ictus, appellant should be punished under Article 48, in relation to Article 4, of the Revised Penal Code. Having committed attempted homicide as against Dennis Macagaling and consummated homicide with respect to Teotimo Fameronag when he fired the first shot, appellant committed two grave felonies with one single act and, accordingly, he would be liable for a complex crime in the nature of a delito compuesto, or a compound crime.[46] However, not having been so charged, he cannot be convicted of a complex crime,[47] hence the court below did not err in finding him guilty of simple homicide in Criminal Case No. 1815.

2. The charge of illegal possession of a firearm and ammunition merits a more extended consideration. It will be recalled that this third accusation was filed as Criminal Case No. 1834 on October 29, 1991, or more than three months after the filing of the first two indictments in the same court, under an information which alleged that during the same incident involved in Criminal Cases Nos. 1814 and 1815 -?

"x x x the said accused, did then and there, without legal authority therefor, willfully, unlawfully and feloniously have in his possession and under his custody and control one Cal. 38 Revolver (Smith and Wesson without serial number) with one live bullet and five empty shells which he used in shooting Dennis Macagaling and Teotimo Fameronag."[48]

Prefatorily, we note from appellant's brief his position that the lower court erred in holding that the gun was

owned by him without being supported by convincing proof. He asserts that assuming *arguendo* that the gun was handed by him to Pfc. Fesalbon immediately after the former arrived at the scene of the crime, this is not sufficient proof that he owned the gun.[49] Appellant's theory is off-tangent.

Under Section 1 of Presidential Decree No. 1866, the gravamen of the offense is basically the fact of possession of a firearm without a license, it being assumed that it was so possessed with *animus possidendi*. We have heretofore explained that, in view of the text of said decree, the crime may be denominated as simple illegal possession, to distinguish it from the aggravated form wherein such firearm is used in the commission of a homicide or murder.[50] However, to be liable for the aggravated form of illegal possession of a firearm which entails the capital punishment, such illegal possession must be the specific and principal offense charged, with the fact of killing being included in the particulars of the indictment.[51]

In either case, the offense is committed not on the basis of ownership but of possession of the firearm without the requisite license or permit, and this disposes of appellant's objection on this score. What, however, is of greater concern to the Court is whether the prosecution has discharged the burden of proof on this charge. Corollarily, the inquiry should be whether there was sufficient identification of the firearm presented in the trial court and, more importantly, whether there was sufficient evidence to establish the negative allegation that appellant possessed the gun "without legal authority therefor."

On the identification of the gun, these exchanges in the courtroom during the cross-examination of Pfc. Fesalbon, the lone prosecution witness on this issue, give us ground to pause and doubt:

"Q - You also stated that this was the gun you got from Leonito Macagaling that evening of May 2?

A - Yes sir, that is the gun.

Q - How did you know that this is the gun?

A - Because it was really the gun I took from him.

Q - How do you know that this is really the gun?

A - Because at the bottom of the bat (sic, should be butt) there is a serial number and it was erased by grinding and the serial number was erased.

Q - When did you discover that the serial number here was erased?

A - Immediately after my inspection I discovered that there is no serial number.

Q - When did you make your inspection?

A - Immediately after his arrest.

x x x

Q - But there were many guns like this whose serial number has been erased, do you think serial number -

A - I don't know, that is the only gun I saw with erased serial number, even paltik guns have serial numbers.

Q - So that is the only distinguishing mark that you can tell us how you recognized this gun to be the gun which you took from Leonito Macagaling that evening?

A - Not only that serial number but the whole body of the gun.

COURT:

Did you not place your own personal identification mark in Exhibit E?

A - My personal identification is that I could identify paltik and those genuine guns.

COURT:

You did not answer the question, answer the question.

A - I did not put any distinguishing mark.

COURT:

That should be answered that way. That can be answered by yes or no. Next time again you should place again your own identification in guns and even ammos. (I)n Exhibits E-1 to E-6, did you place your own identification mark in each of them?

A - No, sir.

COURT:

Next time you place your own mark. Because from apprehension up to this very moment, it is a long, long time, it crossed the very handle (sic) by many hands. Proceed.

x x x

ATTY. MADRONA:

Q - What I mean with general appearance li(k)e this gun, would you agree with me that there are thousands of (S)mith and (W)esson guns with the general appearance like this?

A - Yes, sir."[52]

It is a curious fact that although the incident took place on May 2, 1991, the information in Criminal Case No. 1834 for illegal possession of the gun was filed only on October 29, 1991. Pfc. Fesalbon testified thereon on May 29, 1992 and yet, although the firearm was in the possession of the police for more than a year, there was no attempt to ensure its positive identification through standard police procedure of which Pfc. Fesalbon, as a police investigator, could not have been unaware.

For that matter, the efforts exerted to obtain evidence proving that appellant was not a licensed holder of the firearm was lackadaisical at best. This is the prosecution's only evidence to prove the allegation in the information that appellant's possession of a firearm was "without legal authority therefor," again through the bare testimony of Pfc. Fesalbon:

"Q - You made mention that you conducted an investigation after taking Exhibit D (sic, should be E) from the accused, did you find out whether that gun is licensed or not?

A - Yes, sir.

Q - What did you find out?

A - I found out that the gun has no license.

Q - Do you mean to tell this Honorable Court that the accused Leonito Macagaling is not a firearm licensee of your town?

A - Yes, sir."[53]

That is all. Nor did the witness deign to explain how he arrived at his conclusion. No other evidence was

presented on this serious charge which, in its aggravated form could, at the least, be punished by reclusion perpetua due to the proscription against the death penalty.* Yet, despite the opportunity and intervening time to do so, not even a certification that appellant was not a licensed firearm holder was obtained from the Firearms and Explosives Office or the local command of the Philippine National Police. And this brings us to the question of the necessity and the quantum of evidence for proving a negative allegation in an information, in this case the lack of a firearms license or permit.

The evidentiary rule on negative averments in the 1940 Rules of Court[54] as adopted in the 1964 Rules of Court[55] in criminal cases was as follows:

"Sec. 2 Burden of proof in criminal cases. - In criminal cases the burden of proof as to the offense charged lies on the prosecution. A negative fact alleged by the prosecution need not be proved unless it is an essential ingredient of the offense charged." (Italics ours.)

While the italicized portion was not carried over to the revised Rules on evidence, there is no reason to believe that such requirement for proof of a negative element of the offense charged has been dispensed with, since it is specifically provided therein that the "(b)urden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."[56]

As applied to prosecutions for illegal possession of firearms and ammunition, the present rule on proving the negative fact of lack of a license actually harks back to the case of *People vs. Quebral*,[57] where we find this passage clarifying the seemingly contentious pronouncements on the matter:

"The rule is, and has always been, that, if the subject of the negative averment, like, for instance, the act of voting without the qualifications provided by law, inheres in the offense as an essential ingredient thereof, the prosecution has the burden of proving the same (Sec. 297, Act No. 190; *U.S. vs. Tria*, 17 Phil., 303, 306, 307). In view, however, of the difficult office of proving a negative allegation, the prosecution, under such circumstance, need do no more than make a prima facie case from the best evidence obtainable. (*U.S. vs. Tria*, supra) It would certainly be anomalous to hold 'x x x that mere difficulty in discharging a burden of making proof should displace it; and as a matter of principle the difficulty only relieves the party having the burden of evidence from the necessity of creating positive conviction entirely by his own evidence so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of his opponent' (22 C.J., pp. 81, 82).

x x x

"Section 770 of the Administrative Code provides that 'no person shall practice medicine in the Philippine Islands without having previously obtained the proper certificate of registration issued by the Board of Medical Examiners x x x.' This provision clearly includes the want of certificate as an essential element of the offense charged. The negative fact is not separable from the offense as defined. It is, therefore, incumbent upon the prosecution to prove that negative fact, and failure to prove it is a ground for acquittal." (Italics in the original text.)

While the offenses involved or discussed therein were illegal practice of medicine without the certificate of registration and the unlawful act of voting without the qualifications required by law, the rationale evidently applies to illegal possession of firearms without a license. Thus, although there were some supervening departures from the doctrine announced therein, the principle in *Quebral* was adopted in *People vs. Pajenado*[58] where we held:

"Upon the question of whether or not appellant should also be convicted of the crime of illegal possession of a firearm, We agree with both appellant's counsel and the Solicitor General that the appealed decision should be reversed.

"It is true that *People vs. Lubo*, 101 Phil. 179 and *People vs. Ramos*, 8 SCRA 758 could be invoked to support the view that it is incumbent upon a person charged with illegal possession of a firearm to prove the issuance to him of a license to possess the firearm, but We are of the considered opinion that under the provisions of Section 2, Rule 131 of the Rules of Court which provide that in criminal cases the burden of proof as to the offense charged lies on the prosecution and that a negative fact alleged by the prosecution must be proven if 'it is an essential ingredient of the offense charged', the burden of proof was with the prosecution in this case to prove that the firearm used by appellant in committing the offense was not properly licensed.

"It cannot be denied that the lack or absence of a license is an essential ingredient of the offense of illegal possession of a firearm. The information filed against appellant x x x specifically alleged that he had no 'license or permit to possess' the .45 caliber pistol mentioned therein. Thus, it seems clear that it was the prosecution's duty not merely to allege that negative fact but to prove it. x x x." (Emphasis supplied.)

This doctrinal rule was reiterated in *People vs. Tiozon*,^[59] *People vs. Caling*, *supra*, *People vs. Ramos, et al.*,^[60] *People vs. Arce*,^[61] and *People vs. Deunida*,^[62] and this constitutes the present governing case law on this question. We cannot see how the rule can be otherwise since it is the inescapable duty of the prosecution to prove all the ingredients of the offense as alleged against the accused in an information, which allegations must perforce include any negative element provided by the law to integrate that offense. We have reiterated quite recently the fundamental mandate that since the prosecution must allege all the elements of the offense charged, then it must prove by the requisite quantum of evidence all the elements it has thus alleged.^[63]

Applied to the cases at bar, we cannot conceive of how, under the demonstrated circumstances herein, we can sustain a judgment of conviction on this particular charge. It may be well to recall that how the firearm came into appellant's possession is a seriously contested issue, with the prosecution witnesses merely stating that they saw the gun only when appellant aimed and fired at the victims, but with appellant contending that he actually wrested it from Dennis Macagaling. As to who in truth was the possessor of the firearm prior to the incident cannot be determined with certitude due to the paucity of the evidence thereon. In fine, since all that can be deduced is that appellant was in possession of the gun only on that occasion for a transitory purpose and for the short moment coeval therewith, it cannot be concluded that he had the *animus possidendi* which is required for the offense charged.

The highly unsatisfactory identification of the gun, coupled with the intervening time between its retrieval from appellant to its presentation in the court below, increases our misgivings on whether it was in fact the weapon involved. Indeed, such lack of positive identification is virtually equivalent to the non-production of the real firearm in court and is analogous to the situation in *People vs. Caling*, *supra*, where the rifle allegedly involved in the case was not presented in evidence. We held that such failure effectively closed the door to any proof of the negative fact that no license or permit therefor had been issued to the accused therein.

The foregoing disquisitions in *Quebral*, *Pajenado* and other cited cases have inevitably clinched the case for herein appellant on this accusation, this time by reason of the abject failure of the prosecution to adduce the requisite evidence on its negative averment. Even on the assumption that mere *prima facie* evidence of the lack of a license or permit on the part of appellant would suffice, still the self-serving, unexplained and undocumented conclusion thereon of Pfc. Roque Fesalbon could not even assume a rough approximation of that evidential quantum.

WHEREFORE, the judgment of the trial court finding accused-appellant Leonito Macagaling y Atilano guilty of the crime of homicide in Criminal Case No. 1814 and also of homicide in Criminal Case No. 1815 is hereby **AFFIRMED**. However, its judgment in Criminal Case No. 1834 for illegal possession of a firearm and ammunition is **REVERSED** and said accused-appellant is hereby **ACQUITTED** of the offense charged therein on

reasonable doubt, with costs de oficio.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.
Padilla, J., on leave.

-
- [1] Original Record, Criminal Cases Nos. 1814, 1815 and 1834, 1.
[2] Ibid., Criminal Case No. 1814, 6; Criminal Case No. 1815, 8.
[3] Ibid., Criminal Case No. 1834, 22.
[4] Ibid., Criminal Case No. 1814, 85-86; penned by Judge Placido C. Marquez.
[5] TSN, May 28, 1992, 5-7.
[6] Ibid., id., 35-36.
[7] Ibid., May 29, 1992, 13-14, 19-21, 36.
[8] Ibid., May 28, 1992, 53-55.
[9] Ibid., May 29, 1992, 25-26, 29.
[10] Ibid., May 28, 1992, 39-41.
[11] Ibid., May 29, 1992, 4, 9-10.
[12] Ibid., July 28, 1992, 4-7.
[13] Ibid., id., 25-27, 29.
[14] Ibid., id., 30-34.
[15] Ibid., July 30, 1992, 26-30.
[16] Ibid., id., 30-32.
[17] Exhibit F, Record of Exhibits, 14.
[18] TSN, July 30, 1992, 37-38, 48.
[19] Ibid., id., 40-41, 46.
[20] Araneta, Jr. vs. CA, G.R. No. 43527, July 3, 1990, 187 SCRA 123, and cases therein cited.
[21] People vs. De la Cruz, et al., G.R. No. 68319, May 31, 1992, 207 SCRA 632.
[22] TSN, July 28, 1992, 39.
[23] Ibid., July 29, 1992, 42.
[24] Ibid., July 30, 1992, 15.
[25] Ibid., id., 15.
[26] Ibid., id., 4-5.

[27] Ibid., id., 6-7, 11-13.

[28] Ibid., id., 18-19.

[29] Ibid., July 29, 1992, 23-24.

[30] Ibid., id., 28-29.

[31] Exhibit A, Record of Exhibits, 8; Exhibit F, *ibid.*, 14.

[32] *People vs. Sagadsad, et al.*, G.R. No. 88042, November 13, 1992, 215 SCRA 641.

[33] *People vs. Sarence, et al.*, G.R. No. 97433, October 20, 1992, 214 SCRA 780.

[34] Decision, 18-20, Original Record, Criminal Case No. 1815, 97-99.

[35] Exhibit 7, Record of Exhibits, 1-2.

[36] Brief of the Appellee, 22; Rollo, 177.

[37] Appellant's Brief, 3; Rollo, 100.

[38] TSN, May 28, 1992, 6.

[39] Ibid., id., 60.

[40] Ibid., id., 7.

[41] Ibid., May 29, 1992, 19.

[42] *People vs. Avila*, G.R. No. 82374, December 10, 1990, 192 SCRA 242.

[43] TSN, May 29, 1992, 20.

[44] Ibid., July 20, 1992, 45.

[45] *People vs. Payumo*, G.R. No. 81761, July 2, 1990, 187 SCRA 64.

[46] *People vs. Guillen*, 85 Phil. 307 (1950).

[47] *People vs. Ginosolongo*, 23 Phil. 171 (1912).

[48] Original Record, Criminal Case No. 1834.

[49] Rollo, 111-113.

[50] *People vs. Caling*, G.R. No. 94784, May 8, 1992, 208 SCRA 821.

[51] *People vs. Tac-an*, G.R. Nos. 76338-39, February 26, 1990, 182 SCRA 601. While the writer has reservations on the doctrines announced in this case, any reexamination thereof will have to await the presentation of issues thereon in a proper proceeding.

[52] TSN, May 29, 1992, 36-39.

[53] Ibid., id., 24-25.

* The Constitutional prohibition against the imposition of the death penalty still applies to capital offenses under P.D. No. 1866 as they are not included in the crimes for which the reimposition of the death penalty was provided in R.A. No. 7659.

[54] Sec. 71, Rule 123.

[55] Sec. 2, Rule 131.

[56] Sec. 1, Rule 131, as amended and approved by the Supreme Court in its Resolution of March 14, 1989, effective on July 1, 1989.

[57] 68 Phil. 564 (1939).

[58] L-27680-81, February 27, 1970, 31 SCRA 812.

[59] G.R. No. 89823, June 19, 1991, 198 SCRA 368.

[60] G.R. Nos. 101804-07, May 25, 1993, 222 SCRA 557.

[61] G.R. Nos. 101833-34, October 26, 1993, 227 SCRA 406.

[62] G.R. Nos. 105199-200, March 28, 1994.

[63] People vs. Fider, G.R. No. 105285, June 5, 1993, 223 SCRA 117; People vs. Aranda, G.R. No. 100985, September 17, 1993, 226 SCRA 562.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.