

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANIELQUIJADA Y CIRCULADO, ACCUSED-APPELLANT.

G.R. Nos. 115008-09. July 24, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Daniel Quijada appeals from the decision of 30 September 1993 of Branch 1 of the Regional Trial Court (RTC) of Bohol convicting him of the two offenses separately charged in two informations, viz., murder under Article 248 of the Revised Penal Code and illegal possession of firearm in its aggravated form under P.D. No. 1866, and imposing upon him the penalty of reclusion perpetua for the first crime and an indeterminate penalty ranging from seventeen years, four months, and one day, as minimum, to twenty years and one day, as maximum, for the second crime.[1]

The appeal was originally assigned to the Third Division of the Court but was later referred to the Court en banc in view of the problematical issue of whether to sustain the trial court's judgment in conformity with the doctrine laid down in *People vs. Tac-an*,[2] *People vs. Tiozon*,[3] *People vs. Caling*,[4] *People vs. Jumamoy*,[5] *People vs. Deunida*,[6] *People vs. Tiongco*,[7] *People vs. Fernandez*,[8] and *People vs. Somooc*,[9] or to modify the judgment and convict the appellant only of illegal possession of firearm in its aggravated form pursuant to *People vs. Barros*,[10] which this Court (Second Division) decided on 27 June 1995.

The informations read as follows:

CRIMINAL CASE NO. 8178

That on or about the 30th day of December, 1992, in the municipality of Dauis, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill and without any justifiable motive, with treachery and abuse of superior strength, the accused being then armed with a .38 cal. revolver, while the victim was unarmed, suddenly attacked the victim without giving the latter the opportunity to defend himself, and with evident premeditation, the accused having harbored a grudge against the victim a week prior to the incident of murder, did then and there willfully, unlawfully and feloniously attack, assault and shoot Diosdado Iroy y Nesnea with the use of the said firearm, hitting the latter on his head and causing serious injuries which resulted to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the provision of Art. 248 of the Revised Penal Code, with aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime.[11]

CRIMINAL CASE NO. 8179

That on or about the 30th day of December, 1992, in the municipality of Dauis, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously keep, carry and have in his possession, custody and control a firearm (hand gun) with ammunition, without first obtaining the necessary permit or license to possess the said firearm from

competent authorities which firearm was carried by the said accused outside of his residence and was used by him in committing the crime of Murder with Diosdado Iroy y Nesnea as the victim; to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of P.D. No. 1866.[12]

Having arisen from the same incident, the cases were consolidated, and joint hearings were had. The witnesses presented by the prosecution were SPO4 Felipe Nigparanon (Acting Chief of Police of Dauis, Bohol), SPO Gondalino Inte, Dr. Greg Julius Sodusta, Rosita Iroy, and Teodula Matalinis. The defense presented as witnesses Alfred Aranzado, Edwin Nistal, Julius Bona, Saturnino Maglupay, and the appellant himself.

The evidence for the prosecution is summarized by the Office of the Solicitor General in the Brief for the Appellee as follows:

On 25 December 1992, a benefit dance was held at the Basketball Court of Barangay Tinago, Dauis, Bohol. On this occasion, a fist fight occurred between Diosdado Iroy and appellant Daniel Quijada as the latter was constantly annoying and pestering the former's sister. Rosita Iroy (TSN, Crim. Cases 8178 & 8179, June 8, 1993, pp. 32-35; August 5, 1993, pp. 14-15).

In the evening of 30 December 1992, another benefit dance/disco was held in the same place. This benefit dance was attended by Rosita Iroy, Ariel Dano, Teodora Badayos, Ado Aranzado, Largo Iroy and Diosdado Iroy.

While Rosita Iroy and others were enjoying themselves inside the dancing area, Diosdado Iroy, Eugene Nesnea and Largo Iroy, who were then sitting at the plaza (the area where they positioned themselves was duly lighted and was approximately four meters from the dancing hall), decided to just watch the activities in the dance hall directly from the plaza.

After dancing, Rosita Iroy decided to leave and went outside the gate of the dance area. Subsequently, or around 11:30 of the same night, while facing the direction of Diosdado Iroy, Rosita Iroy saw appellant surreptitiously approach her brother Diosdado Iroy from behind. Suddenly, appellant fired his revolver at Diosdado Iroy, hitting the latter at the back portion of the head. This caused Rosita Iroy to spontaneously shout that appellant shot her brother; while appellant, after shooting Diosdado Iroy, ran towards the cornfield.

Diosdado Iroy was immediately rushed by Elmer Nigparanon and Largo Iroy to the hospital but the injury sustained was fatal. In the meantime, Rosita Iroy went home and relayed to her parents the unfortunate incident (TSN, Crim Case Nos. 8178 & 8179, June 8, 1993, pp. 9-22, inclusive of the preceding paragraphs).

At around midnight, the incident was reported to then Acting Chief of Police Felipe Nigparanon by Mrs. Alejandra Iroy and her daughter Teodula Matalinis. The police officer made entries in the police blotter regarding the shooting and correspondingly, ordered his men to pick up the appellant. But they were unable to locate appellant on that occasion (TSN, Crim. Case Nos. 8178 & 8179, June 9, 1993, pp. 2-6).

In the afternoon of 31 December 1992, appellant, together with his father Teogenes Quijada went to the police station at Dauis, Bohol. There and then, appellant was pinpointed by Elenito Nistal and Rosita Iroy as the person who shot Diosdado Iroy. These facts were entered in the police blotter as Entry No. 1151 (TSN, Crim. Case Nos. 8178 & 8179, *ibid.* p. 14, June 14, 1993, pp. 4-6).[13]

The slug was embedded at the midbrain.[14] Diosdado Iroy died of

Cardiorespiratory arrest, secondary to tonsillar herniation, secondary to massive intracranial hemorrhage, secondary to gunshot wound, 1 cm. left occipital area, transacting cerebellum up to midbrain.[15]

The firearm used by the appellant in shooting Diosdado Iroy was not licensed. Per certifications issued on 26 April 1993, the appellant was not a duly licensed firearm holder as verified from a consolidated list of licensed

firearm holders in the province[16] and was not authorized to carry a firearm outside his residence.[17]

The appellant interposed the defense of alibi, which the trial court rejected because he was positively identified by prosecution witness Rosita Iroy. It summarized his testimony in this wise:

Daniel Quijada y Circulado, the accused in the instant cases, declared that in the afternoon of December 30, 1992 he was in their house At 6:00 o'clock in the afternoon he went to Tagbilaran City together with Julius Bonao in a tricycle No. 250 to solicit passengers. They transported passengers until 10:30 o'clock in the evening. They then proceeded to the Tagbilaran wharf waiting for the passenger boat Trans Asia Taiwan. Before the arrival of Trans Asia Taiwan they had a talk with Saturnino Maglopay. They were able to pick up two passengers for Graham Avenue near La Roca Hotel. They then returned to the Tagbilaran wharf for the arrival of MV Cebu City that docked at 12:10 past midnight. They had a talk with Saturnino Maglopay who was waiting for his aunties scheduled to arrive aboard MV Cebu City. They were not able to pick up passengers which, as a consequence, they went home. They had on their way home passengers for the Agora Public Market. They arrived at the house of Julian Bonao at Bil-isan, Panglao, Bohol at 3:00 o'clock in the morning of December 31, 1992 where he passed the night. He went home to Mariveles, Dauis, Bohol at 9:00 o'clock in the morning.[18]

The trial court gave full faith and credit to the version of the prosecution and found the appellant guilty beyond reasonable doubt of the crimes charged and sentenced him accordingly. It appreciated the presence of the qualifying circumstance of treachery considering that the appellant shot the victim at the back of the head while the latter was watching the dance. The dispositive portion of the decision dated 30 September 1993 reads as follows:

PREMISES CONSIDERED, in Criminal Case No. 8178, the court finds the accused Daniel Quijada guilty of the crime of murder punished under Article 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of Reclusion Perpetua, with the accessories of the law and to pay the cost.

In Criminal Case No. 8179, the Court finds the accused Daniel Quijada guilty of the crime of Qualified Illegal Possession of Firearm and Ammunition punished under Sec. 1 of R.A. No. 1866 as amended, and hereby sentences him to suffer an indeterminate sentence from Seventeen (17) years Four (4) months and One (1) day, as minimum, to Twenty (20) years and One (1) day, as maximum, with the accessories of the law and to pay the cost.

The slug or bullet which was extracted from the brain at the back portion of the head of the victim Diosdado Iroy is hereby ordered forfeited in favor of the government.

It appearing that the accused Daniel Quijada has undergone preventive imprisonment he is entitled to the full time he has undergone preventive imprisonment to be deducted from the term of sentence if he has executed a waiver otherwise he will only be entitled to 4/5 of the time he has undergone preventive imprisonment to be deducted from his term of sentence if he has not executed a waiver.[19]

On 29 October 1993, after discovering that it had inadvertently omitted in the decision an award of civil indemnity and other damages in Criminal Case No. 8178, the trial court issued an order directing the appellant to pay the parents of the victim the amount of P50,000.00 as indemnity for the death of their son and P10,000.00 for funeral expenses.[20] The order was to form an integral part of the decision.

The decision was promulgated on 29 October 1993.[21]

The appellant forthwith interposed the present appeal, and in his Brief, he contends that the trial court erred

I

. . . IN CONVICTING ACCUSED-APPELLANT AND GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES ROSITA IROY AND FELIPE NIGPARANON.

II

. . . IN NOT CONSIDERING THE TESTIMONIES OF DEFENSE WITNESSES EDWIN NISTAL AND ALFRED ARANZADO, AND IN DISREGARDING THE PICTORIAL EXHIBITS OF THE ACCUSED-APPELLANT PARTICULARLY THE RELATIVE POSITIONS OF DIOSDADO IROY, ROSITA IROY, EDWIN NISTAL, AND ALFRED ARANZADO.

III

. . . IN FAILING TO CONSIDER THAT PROSECUTION WITNESSES ROSITA IROY AND SP04 FELIPE NIGPARANON HAD MOTIVES IN FALSELY TESTIFYING AGAINST ACCUSED-APPELLANT.[22]

The appellant then submits that the issue in this case boils down to the identity of the killer of Diosdado Iroy. To support his stand that the killer was not identified, he attacks the credibility of prosecution witnesses Rosita Iroy and SP04 Felipe Nigparanon. He claims that the former had a motive "to put him in a bad light" and calls our attention to her direct testimony that her brother Diosdado, the victim, boxed him on the night of 25 December 1992 because he allegedly "bothered her." He further asserts that Rosita could not have seen the person who shot Diosdado considering their respective positions, particularly Rosita who, according to defense witnesses Nistal and Aranzado, was still inside the dancing area and ran towards the crime scene only after Diosdado was shot. And, the appellant considers it as suppression of evidence when the prosecution did not present as witnesses Diosdado's companions who were allegedly seated with Diosdado when he was shot.

As to SPO4 Nigparanon, the appellant intimates improper motives in that the said witness is a neighbor of the Iroys, and when he testified, a case for arbitrary detention had already been filed against him by the appellant. The appellant further claims of alleged omissions and unexplained entries in the police blotter.

Finally, the appellant wants us to favorably consider his defense of alibi which, according to him, gained strength because of the lack of evidence on the identity of the killer. Furthermore, he stresses that his conduct in voluntarily going to the police station after having been informed that he, among many others, was summoned by the police is hardly the actuation of the perpetrator of the killing of Diosdado Iroy -- specially so if Rosita Iroy's claim is to be believed that moments after the shooting she shouted that Daniel Quijada shot Diosdado Iroy.

In its Appellee's Brief, the People refutes every argument raised by the appellant and recommends that we affirm in toto the challenged decision.

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, we find this appeal to be absolutely without merit.

The imputation of ill-motive on the part of Rosita Iroy and the basis therefor hardly persuade. The appellant was the one who was boxed by and lost to Diosdado Iroy in their fight on the night of 25 December 1992. It is then logical and consistent with human experience that it would be the appellant who would have forthwith entertained a grudge, if not hatred, against Diosdado. No convincing evidence was shown that Rosita had any reason to falsely implicate the appellant in the death of her brother Diosdado.

The claim that Rosita could not have seen who shot her brother Diosdado because, as testified to by defense witnesses Nistal and Aranzado, she was inside the dancing hall and rushed to her brother only after the latter was shot is equally baseless. The following testimony of Rosita shows beyond cavil that she saw the assailant:

Q

You said that you were initially dancing inside the dancing place and you went out, about what time did you get out?

A

11:00 o'clock.

Q

And you were standing about two (2) meters from Diosdado Iroy until 11:30 when the incident happened?

A

Yes, I was standing.

Q

And where did you face, you were facing Diosdado Iroy or the dancing area?

A

I was intending to go near my brother. I was approaching and getting near going to my brother Diosdado Iroy and while in the process I saw Daniel Quijada shot my brother Diosdado Iroy.[23]

xxx xxx xxx

Q

And in your estimate, how far was your brother Diosdado Iroy while he was sitting at the plaza to the dancing place?

A

More or less four (4) meters distance.

COURT:

From the dancing hall?

A

Yes, your honor.

Q

And in your observation, was the place where Diosdado Iroy was sitting lighted or illuminated?

A

Yes, sir.

Q

What kind of light illuminated the place?

A

I do not know what kind of light but it was lighted.

Q

Was it an electric light?

A

It is electric light coming from a bulb.

Q

Where is that electric bulb that illuminated the place located?

A

It was placed at the gate of the dancing place and the light from the house.

Q

You said gate of the dancing place, you mean the dancing place was enclosed at that time and there was a gate, an opening?

A

Yes, sir.

Q

What material was used to enclose the dancing place?

A

Bamboo.

Q

And how far was the bulb which was placed near the entrance of the dancing place to the place where Diosdado Iroy was sitting?

A

Five (5) meters.

Q

You mentioned also that there was a light coming from the house, now whose house was that?

A

The house of spouses Fe and Berto, I do not know the family name.

Q

Was the light coming from the house of spouses Fe and Berto an electric light?

A

Yes sir.

Q

And in your estimate, how far was the source of light of the house of Fe and Berto to the place where Diosdado Iroy was sitting?

A

About six (6) meters distance.[24]

xxx xxx xxx

Q

What was the color of the electric bulb in the gate of the dancing place?

A

The white bulb.[25]

The trial court disbelieved the testimony of Nistal and Aranzado. It explicitly declared:

The factual findings of the Court in the instant case is anchored principally in ". . . observing the attitude and deportment of witnesses while listening to them speak (People vs. Magaluna, 205, SCRA 266).

thereby indicating that on the basis of the witnesses' deportment and manner of testifying, the declarations of Nistal and Aranzado failed to convince the trial court that they were telling the truth. Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply;[26] or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[27] The appellant has miserably failed to convince us that we must depart from this rule.

Neither are we persuaded by the claimed suppression of evidence occasioned by the non-presentation as prosecution witnesses any of the companions of Diosdado who were seated with him when he was shot. In the first place, the said companions could not have seen from their back the person who suddenly shot Diosdado. In the second place, the testimony of the companions would, at the most, only corroborate that of Rosita Iroy. Besides, there is no suggestion at all that the said companions were not available to the appellant. It is settled that the presumption in Section 3 (e), Rule 131 of the Rules of Court that evidence willfully suppressed would be adverse if produced does not apply when the testimony of the witness is merely corroborative or where the witness is available to the accused.[28]

The alleged improper motive on the part of SP04 Nigparanon simply because he is a neighbor of the Iroy; remains purely speculative, as no evidence was offered to establish that such a relationship affected SP04 Nigparanon's objectivity. As a police officer, he enjoyed in his favor the presumption of regularity in the performance of his official duty.[29] As to the alleged omissions and unexplained entries in the police blotter, the same were sufficiently clarified by SP04 Nigparanon.

The defense of alibi interposed by the appellant deserves scant consideration. He was positively identified by a credible witness. It is a fundamental judicial dictum that the defense of alibi cannot prevail over the positive identification of the accused.[30] Besides, for that defense to prosper it is not enough to prove that the accused was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[31] As testified to by defense witness Julian Bona, the Tagbilaran wharf, where the appellant said he was, is only about eight to nine kilometers away from the crime scene and it would take only about thirty minutes to traverse the distance with the use of a tricycle.[32] It was, therefore, not physically impossible for the appellant to have been at the scene of the crime at the time of its commission.

Finally, the appellant asserts that if he were the killer of Diosdado Iroy, he would not have voluntarily proceeded to the police station. This argument is plain sophistry. The law does not find unusual the voluntary surrender of offenders; it even considers such act as a mitigating circumstance.[33] Moreover, non-flight is not conclusive

proof of innocence.[34]

The evidence for the prosecution further established with moral certainty that the appellant had no license to possess or carry a firearm. The firearm then that he used in shooting Diosdado Iroy was unlicensed. He, therefore, committed the crime of aggravated illegal possession of firearm under the second paragraph of Section 1 of P.D. No. 1866, which reads:

SEC. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, 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.

In light of the doctrine enunciated in *People vs. Tac-an*,^[35] and reiterated in *People vs. Tiozon*,^[36] *People vs. Caling*,^[37] *People vs. Jumamoy*,^[38] *People vs. Deunida*,^[39] *People vs. Tiongco*,^[40] *People vs. Fernandez*,^[41] and *People vs. Somooc*,^[42] that one who kills another with the use of an unlicensed firearm commits two separate offenses of (1) either homicide or murder under the Revised Penal Code, and (2) aggravated illegal possession of firearm under the second paragraph of Section 1 of P.D. No. 1866, we sustain the decision of the trial court finding the appellant guilty of two separate offenses of murder in Criminal Case No. 8178 and of aggravated illegal possession of firearm in Criminal Case No. 8179.

Although *Tac-an* and *Tiozon* relate more to the issue of whether there is a violation of the constitutional proscription against double jeopardy if an accused is prosecuted for homicide or murder and for aggravated illegal possession of firearm, they at the same time laid down the rule that these are separate offenses, with the first punished under the Revised Penal Code and the second under a special law; hence, the constitutional bar against double jeopardy will not apply. We observed in *Tac-an*:

It is elementary that the constitutional right against double jeopardy protects one against a second or later prosecution for the same offense, and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no prohibited double jeopardy. In the case at bar, it appears to us quite clear that the offense charged in Criminal Case No. 4007 is that of unlawful possession of an unlicensed firearm penalized under a special statute, while the offense charged in Criminal Case No. 4012 was that of murder punished under the Revised Penal Code. It would appear self-evident that these two (2) offenses in themselves are quite different one from the other, such that in principle, the subsequent filing of Criminal Case No. 4012 is not to be regarded as having placed appellant in a prohibited second jeopardy.

And we stressed that the use of the unlicensed firearm cannot serve to increase the penalty for homicide or murder; however, the killing of a person with the use of an unlicensed firearm, by express provision of P.D. No. 1866, shall increase the penalty for illegal possession of firearm.

In *Tiozon*, we stated:

It may be loosely said that homicide or murder qualifies the offense penalized in said Section 1 because it is a circumstance which increases the penalty. It does not, however, follow that the homicide or murder is absorbed in the offense; otherwise, an anomalous absurdity results whereby a more serious crime defined and penalized in the Revised Penal Code is absorbed by a statutory offense, which is just a *malum prohibitum*. The rationale for the qualification, as implied from the exordium of the decree, is to effectively deter violations of the laws on firearms and to stop the "upsurge of crimes vitally affecting public order and safety due to the proliferation

of illegally possessed and manufactured firearms, x x x." In fine then, the killing of a person with the use of an unlicensed firearm may give rise to separate prosecutions for (a) violation of Section 1 of P.D. No. 1866 and (b) violation of either Article 248 (Murder) or Article 249 (Homicide) of the Revised Penal Code. The accused cannot plead one as a bar to the other; or, stated otherwise, the rule against double jeopardy cannot be invoked because the first is punished by a special law while the second, homicide or murder, is punished by the Revised Penal Code.

In *People vs. Doriguez*, [24 SCRA 163, 171], We held:

It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A simple act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased otherwise, where two different laws (or articles of the same code) defines two crimes, prior jeopardy as to one of them is not obstacle to a prosecution of the other, although both offenses arise from the same fact, if each crime involves some important act which is not an essential element of the other.

In *People vs. Bacolod* [89 Phil. 621], from the act of firing a shot from a sub-machine gun which caused public panic among the people present and physical injuries to one, informations of physical injuries through reckless imprudence and for serious public disturbance were filed. Accused pleaded guilty and was convicted in the first and he sought to dismiss the second on the ground of double jeopardy. We ruled:

The protection against double jeopardy is only for the same offense. A simple act may be an offense against two different provisions of law and if one provision requires proof of an additional fact which the other does not, an acquittal or conviction under one does not bar prosecution under the other.

Since the informations were for separate offense[s] -- the first against a person and the second against public peace and order -- one cannot be pleaded as a bar to the other under the rule on double jeopardy.

In *Caling*, we explicitly opined that a person charged with aggravated illegal possession of firearm under the second paragraph of Section 1 of P.D. No. 1866 can also be separately charged with and convicted of homicide or murder under the Revised Penal Code and punished accordingly. Thus:

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 x x x (or) ammunition x x x." 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 an 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 P.D. 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. (emphasis supplied)

In *Jumamoy*, we reiterated *Caling* and amplified the rationale on why an accused who kills another with an unlicensed firearm can be prosecuted and punished for the two separate offenses of violation of the second paragraph of Section 1 of P.D. No. 1866 and for homicide or murder under the Revised Penal Code. Thus:

Coming to the charge of illegal possession of firearms, Section 1 of P.D. No. 1866 penalizes, inter alia, the unlawful possession of firearms or ammunition with reclusion temporal in its maximum period to reclusion perpetua. However, under the second paragraph thereof, the penalty is increased to death if homicide or murder is committed with the use of an unlicensed firearm. It may thus be loosely said that homicide or murder qualifies the offense because both are circumstances which increase the penalty. It does not, however, follow that the homicide or murder is absorbed in the offense. If these were to be so, an anomalous absurdity would result whereby a more serious crime defined and penalized under the Revised Penal Code will be absorbed by a statutory offense, one which is merely *malum prohibitum*. Hence, the killing of a person with the use of an unlicensed firearm may give rise to separate prosecutions for (a) the violation of Section 1 of P.D. No. 1866 and (b) the violation of either Article 248 (Murder) or Article 249 (Homicide) of the Revised Penal Code. The accused cannot plead one to bar the other; stated otherwise, the rule against double jeopardy cannot be invoked as the first is punished by a special law while the second - Murder or Homicide - is punished by the Revised Penal Code. [citing *People vs. Tiozon*, 198 SCRA 368, 379 (1991); *People vs. Doriguez*, 24 SCRA 163 (1968)]. Considering, however, that the imposition of the death penalty is prohibited by the Constitution, the proper imposable penalty would be the penalty next lower in degree, or reclusion perpetua. (emphasis supplied)

In *Deunida*, in discussing the propriety of the Government's action in withdrawing an information for murder and pursuing only the information for "Qualified Illegal Possession of Firearm," this Court categorically declared:

At the outset, it must be stressed that, contrary to the prosecution's legal position in withdrawing the information for murder, the offense defined in the second paragraph of Section 1 of P.D. No. 1866 does not absorb the crime of homicide or murder under the Revised Penal Code and, therefore, does not bar the simultaneous or subsequent prosecution of the latter crime. The 1982 decision in *Lazaro vs. People*, involving the violation of P.D. No. 9, which the investigating prosecutor invokes to justify the withdrawal, is no longer controlling in view of our decisions in *People vs. Tac-an*, *People vs. Tiozon*, and *People vs. Caling*.

In *Somooc*, we once more ruled:

The offense charged by the Information is clear enough from the terms of that document, although both the Information and the decision of the trial court used the term "Illegal Possession of Firearm with Homicide," a phrase which has sometimes been supposed to connote a "complex crime" as used in the Revised Penal Code. Such nomenclature is, however, as we have ruled in *People vs. Caling*, a misnomer since there is no complex

crime of illegal possession of firearm with homicide. The gravamen of the offense penalized in P.D. No. 1866 is the fact of possession of a firearm without a license or authority for such possession. This offense is aggravated and the imposable penalty upgraded if the unlicensed firearm is shown to have been used in the commission of homicide or murder, offenses penalized under the Revised Penal Code. The killing of a human being, whether characterized as homicide or murder, is patently distinct from the act of possession of an unlicensed firearm and is separately punished under the provisions of the Revised Penal Code.

The foregoing doctrine suffered a setback when in our decision of 27 June 1995 in *People vs. Barros*,^[43] we set aside that portion of the appealed decision convicting the appellant of the offense of murder and affirmed that portion convicting him of illegal possession of firearm in its aggravated form. We therein made the following statement:

[A]ppellant may not in the premises be convicted of two separate offenses [of illegal possession of firearm in its aggravated form and of murder], but only that of illegal possession of firearm in its aggravated form, in light of the legal principles and propositions set forth in the separate opinion of Mr. Justice Florenz D. Regalado, to which the Members of the Division, the ponente included, subscribe.

The pertinent portions of the separate opinion of Mr. Justice Florenz D. Regalado referred to therein read as follows:

This premise accordingly brings up the second query as to whether or not the crime should properly be the aggravated illegal possession of an unlicensed firearm through the use of which a homicide or murder is committed. It is submitted that an accused so situated should be liable only for the graver offense of aggravated illegal possession of the firearm punished by death under the second paragraph of Section 1, Presidential Decree No. 1866, and it is on this point that the writer dissents from the holding which would impose a separate penalty for the homicide in addition to that for the illegal possession of the firearm used to commit the former.

If the possession of the unlicensed firearm is the only offense imputable to the accused, the Court has correctly held that to be the simple possession punished with reclusion temporal in its maximum period to reclusion perpetua in the first paragraph of Section 1. Where, complementarily, the unlicensed firearm is used to commit homicide or murder, then either of these felonies will convert the erstwhile simple illegal possession into the graver offense of aggravated illegal possession. In other words, the homicide or murder constitutes the essential element for integrating into existence the capital offense of the aggravated form of illegal possession of a firearm. Legally, therefore, it would be illogical and unjustifiable to use the very same offenses of homicide or murder as integral elements of and to create the said capital offense, and then treat the former all over again as independent offenses to be separately punished further, with penalties immediately following the death penalty to boot.

The situation contemplated in the second query is, from the punitive standpoint, virtually of the nature of the so-called, "special complex crimes," which should more appropriately be called composite crimes, punished in Article 294, Article 297 and Article 335. They are neither of the same legal basis as nor subject to the rules on complex crimes in Article 48, since they do not consist of a single act giving rise to two or more grave or less grave felonies nor do they involve an offense being a necessary means to commit another. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses.

On the other hand, even if two felonies would otherwise have been covered by the conceptual definition of a complex crime under Article 48, but the Code imposes a single definite penalty therefor, it cannot also be punished as a complex crime, much less as separate offense, but with only the single penalty prescribed by law. Thus, even where a single act results in two less grave felonies of serious physical injuries and serious slander by deed, the offense will not be punished as a *delito compuesto* under Article 48 but as less serious

physical injuries with ignominy under the second paragraph of Article 265. The serious slander by deed is integrated into and produces a graver offense, and the former is no longer separately punished.

What is, therefore, sought to be stressed by such alternative illustration, as well as the discussion on complex and composite crimes, is that when an offense becomes a component of another, the resultant crime being correspondingly punished as thus aggravated by the integration of the other, the former is not to be further separately punished as the majority would want to do with the homicide involved in the case at bar.

With the foregoing answers to the second question, the third inquiry is more of a question of classification for purposes of the other provisions of the Code. The theory in *Tac-an* that the principal offense is the aggravated form of illegal possession of firearm and the killing shall merely be included in the particulars or, better still, as an element of the principal offense, may be conceded. After all, the plurality of crimes here is actually source from the very provisions of Presidential Decree No. 1866 which sought to "consolidate, codify and integrate" the various laws and presidential decrees to harmonize their provision" which "must be updated and revised in order to more effectively deter violators" of said laws.

This would be akin to the legislative intendment underlying the provisions of the Anti-Carnapping Act of 1972, wherein the principal crime to be charged is still carnapping, although the penalty therefore is increased when the owner, driver or occupant of the carnapped vehicle is killed. The same situation, with escalating punitive provisions when attended by a killing, are found in the Anti-Piracy and Anti-Highway Robbery Law of 1974 and the Anti-Cattle Rustling Law of 1974, wherein the principal crimes still are piracy, highway robbery and cattle rustling. Also, in the matter of destructive arson, the principal offense when, *inter alia*, death results as a consequence of the commission of any of the acts punished under said article of the Code.

In the present case, the academic value of specifying whether it is a case of illegal possession of firearm resulting in homicide or murder, or, conversely, homicide or murder through the illegal possession and use of an unlicensed firearm, would lie in the possible application of the provision on recidivism. Essentially, it would be in the theoretical realm since, taken either way, the penalty for aggravated illegal possession of a firearm is the single indivisible penalty of death, in which case the provision on recidivism would not apply. If, however, the illegal possession is not established but either homicide or murder is proved, then the matter of recidivism may have some significance in the sense that, for purposes thereof, the accused was convicted of a crime against persons and he becomes a recidivist upon conviction of another crime under the same title of the Code.

Lastly, on the matter of the offense or offenses to be considered and the penalty to be imposed when the unlawful killing and the illegal possession are charged in separate informations, from what has been said the appropriate course of action would be to consolidate the cases and render a joint decision thereon, imposing a single penalty for aggravated illegal possession of firearm if such possession and the unlawful taking of life shall have been proved, or for only the proven offense which may be either simple illegal possession, homicide or murder *per se*. The same procedural rule and substantive disposition should be adopted if one information for each offense was drawn up and these informations were individually assigned to different courts or branches of the same court.

Indeed, the practice of charging the offense of illegal possession separately from the homicide or murder could be susceptible of abuse since it entails undue concentration of prosecutorial powers and discretion. Prefatorily, the fact that the killing was committed with a firearm will necessarily be known to the police or prosecutorial agencies, the only probable problem being the determination and obtention of evidence to show that the firearm is unlicensed.

Now, if a separate information for homicide or murder is filed without alleging therein that the same was committed by means of an unlicensed firearm, the case would not fall under Presidential Decree No. 1866. Even if the use of a firearm is alleged therein, but without alleging the lack of a license therefor as where that fact has not yet been verified, the mere use of a firearm by itself, even if proved in that case, would not affect

the accused either since it is not an aggravating or qualifying circumstance.

Conversely, if the information is only for illegal possession, with the prosecution intending to file thereafter the charge for homicide or murder but the same is inexplicably delayed or is not consolidated with the information for illegal possession, then any conviction that may result from the former would only be for simple illegal possession. If, on the other hand, the separate and subsequent prosecution for homicide or murder prospers, the objective of Presidential Decree No. 1866 cannot be achieved since the penalty imposable in that second prosecution will only be for the unlawful killing and further subject to such modifying circumstances as may be proved.

In any event, the foregoing contingencies would run counter to the proposition that the real offense committed by the accused, and for which sole offense he should be punished, is the aggravated form of illegal possession of a firearm. Further, it is the writer's position that the possible problems projected herein may be minimized or obviated if both offenses involved are charged in only one information or that the trial thereof, if separately charged, be invariably consolidated for joint decision. Conjointly, this is the course necessarily indicated since only a single composite crime is actually involved and it is palpable error to deal therewith and dispose thereof by segregated parts in piecemeal fashion.

If we follow Barros, the conviction of the appellant for murder in Criminal Case No. 8178 must have to be set aside. He should only suffer the penalty for the aggravated illegal possession of firearm in Criminal Case No. 8179.

The Court en banc finds in this appeal an opportunity to reexamine the existing conflicting doctrines applicable to prosecutions for murder or homicide and for aggravated illegal possession of firearm in instances where an unlicensed firearm is used in the killing of a person. After a lengthy deliberation thereon, the Court en banc arrived at the conclusion that the rule laid down in Tac-an, reiterated in Tiozon, Caling, Jumamoy, Deunida, Tiongco, Fernandez, and Somooc is the better rule, for it applies the laws concerned according to their letter and spirit, thereby steering this Court away from a dangerous course which could have irretrievably led it to an inexcusable breach of the doctrine of separation of powers through Judicial legislation. That rule upholds and enhances the lawmaker's intent or purpose in aggravating the crime of illegal possession of firearm when an unlicensed firearm is used in the commission of murder or homicide. Contrary to the view of our esteemed brother, Mr. Justice Florenz D. Regalado, in his Concurring and Dissenting Opinion in the case under consideration, Tac-an did not enunciate an "unfortunate doctrine" or a "speciously camouflaged theory" which "constitutes an affront on doctrinal concepts of penal law and assails even the ordinary notions of common sense."

If Tac-an did in fact enunciate such an "unfortunate doctrine," which this Court has reiterated in a convincing number of cases and for a convincing number of years, so must the same verdict be made in our decision in *People vs. De Gracia*,^[44] which was promulgated on 6 July 1994. In the latter case, we held that unlawful possession of an unlicensed firearm in furtherance of rebellion may give rise to separate prosecutions for a violation of Section 1 of P.D. No. 1866 and also for a violation of Articles 134 and 135 of the Revised Penal Code on rebellion. A distinction between that situation and the case where an unlicensed firearm is used in homicide or murder would have no basis at all. In *De Gracia*, this Court, speaking through Mr. Justice Florenz D. Regalado, made the following authoritative pronouncements:

III. As earlier stated, it was stipulated and admitted by both parties that from November 30, 1989 up to and until December 9, 1989, there was a rebellion. Ergo, our next inquiry is whether or not appellant's possession of the firearms, explosives and ammunition seized and recovered from him was for the purpose and in furtherance of rebellion.

The trial court found accused guilty of illegal possession of firearms in furtherance of rebellion pursuant to paragraph 2 of Article 135 of the Revised Penal Code which states that "any person merely participating or

executing the command of others in a rebellion shall suffer the penalty of prison mayor in its minimum period." The court below held that appellant De Gracia, who had been servicing the personal needs of Col. Matillano (whose active armed opposition against the Government, particularly at the Camelot Hotel, was well known), is guilty of the act of guarding the explosives and "molotov" bombs for and in behalf of the latter. We accept this finding of the lower court.

The above provision of the law was, however, erroneously and improperly used by the court below as a basis in determining the degree of liability of appellant and the penalty to be imposed on him. It must be made clear that appellant is charged with the qualified offense of illegal possession of firearms in furtherance of rebellion under Presidential Decree No. 1866 which, in law, is distinct from the crime of rebellion punished under Article 134 and 135 of the Revised Penal Code. There are two separate statutes penalizing different offenses with discrete penalties. The Revised Penal Code treats rebellion as a crime apart from murder, homicide, arson, or other offenses, such as illegal possession of firearms, that might conceivably be committed in the course of a rebellion. Presidential Decree No. 1866 defines and punishes, as a specific offense, the crime of illegal possession of firearms committed in the course or as part of a rebellion.

As a matter of fact, in one case involving the constitutionality of Section 1 of Presidential Decree No. 1866, the Court has explained that said provision of the law will not be invalidated by the mere fact that the same act is penalized under two different statutes with different penalties, even if considered highly advantageous to the prosecution and onerous to the accused. It follows that, subject to the presence of requisite elements in each case, unlawful possession of an unlicensed firearm in furtherance of rebellion may give rise to separate prosecutions for a violation of Section 1 of Presidential Decree No. 1866, and also a violation of Articles 134 and 135 of the Revised Penal Code on rebellion. Double jeopardy in this case cannot be invoked because the first is an offense punished by a special law while the second is a felony punished by the Revised Penal Code with variant elements.

We cannot justify what we did in De Gracia with a claim that the virtue of fidelity to a controlling doctrine, i.e., of Tac-an, had compelled us to do so. Indeed, if Tac-an enunciated an "unfortunate doctrine" which is "an affront on doctrinal concepts of penal law and assails even the ordinary notions of common sense," then De Gracia should have blazed the trail of a new enlightenment and forthwith set aside the "unfortunate doctrine" without any delay to camouflage a judicial faux pas or a doctrinal quirk. De Gracia provided an excellent vehicle for an honorable departure from Tac-an because no attack on the latter was necessary as the former merely involved other crimes to which the doctrine in Tac-an might only be applied by analogy. De Gracia did not even intimate the need to reexamine Tac-an; on the contrary, it adapted the latter to another category of illegal possession of firearm qualified by rebellion precisely because the same legal principle and legislative purpose were involved, and not because De Gracia wanted to perpetuate an "unfortunate doctrine" or to embellish "the expanding framework of our criminal law from barnacled ideas which have not grown apace with conceptual changes over time," as the concurring and dissenting opinion charges.

The majority now reiterates the doctrine in Tac-an and the subsequent cases not because it has become hostage to the "inertia of time [which] has always been the obstacle to the virtues of change," as the concurring and dissenting opinion finds it to be, but rather because it honestly believes that Tac-an laid down the correct doctrine. If P.D. No. 1866 as applied in Tac-an is an "affront on doctrinal concepts of penal laws and assails even the ordinary notions of common sense," the blame must not be laid at the doorsteps of this Court, but on the lawmaker's. All that the Court did in Tac-an was to apply the law, for there was nothing in that case that warranted an interpretation or the application of the niceties of legal hermeneutics. It did not forget that its duty is merely to apply the law in such a way that shall not usurp legislative powers by judicial legislation and that in the course of such application or construction it should not make or supervise legislation, or under the guise of interpretation modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is

repugnant to its terms.[45]

Murder and homicide are defined and penalized by the Revised Penal Code[46] as crimes against persons. They are mala in se because malice or dolo is a necessary ingredient therefor.[47] On the other hand, the offense of illegal possession of firearm is defined and punished by a special penal law,[48] P.D. No. 1866. It is a malum prohibitum[49] which the lawmaker, then President Ferdinand E. Marcos, in the exercise of his martial law powers, so condemned not only because of its nature but also because of the larger policy consideration of containing or reducing, if not eliminating, the upsurge of crimes vitally affecting public order and safety due to the proliferation of illegally possessed and manufactured firearms, ammunition, and explosives. If intent to commit the crime were required, enforcement of the decree and its policy or purpose would be difficult to achieve. Hence, there is conceded wisdom in punishing illegal possession of firearm without taking into account the criminal intent of the possessor. All that is needed is intent to perpetrate the act prohibited by law, coupled, of course, by animus possidendi. However, it must be clearly understood that this animus possidendi is without regard to any other criminal or felonious intent which an accused may have harbored in possessing the firearm.[50]

A long discourse then on the concepts of malum in se and malum prohibilum and their distinctions is an exercise in futility.

We disagree for lack of basis the following statements of Mr. Justice Regalado in his Concurring and Dissenting Opinion, to wit:

The second paragraph of the aforestated Section 1 expressly and unequivocally provides for such illegal possession and resultant killing as a single integrated offense which is punished as such. The majority not only created two offenses by dividing a single offense into two but, worse, it resorted to the unprecedented and invalid act of treating the original offense as a single integrated crime and then creating another offense by using a component crime which is also an element of the former.

It would already have been a clear case of judicial legislation if the illegal possession with murder punished with a single penalty have been divided into two separate offenses of illegal possession and murder with distinct penalties. It is consequently a compounded infringement of legislative powers for this Court to now, as it has done, treat that single offense as specifically described by the law and impose reclusion perpetua therefor (since the death penalty for that offense is still proscribed), but then proceed further by plucking out therefrom the crime of murder in order to be able to impose the death sentence. For indeed, on this score, it is beyond cavil that in the aggravated form of illegal possession, the consequential murder (or homicide) is an integrated element or integral component since without the accompanying death, the crime would merely be simple illegal possession of a firearm under the first paragraph of Section 1.

The second paragraph of Section 1 of P.D. No. 1866 does not warrant and support a conclusion that it intended to treat "illegal possession and resultant killing" (emphasis supplied) "as a single and integrated offense" of illegal possession with homicide or murder. It does not use the clause as a result or on the occasion of to evince an intention to create a single integrated crime. By its unequivocal and explicit language, which we quote to be clearly understood:

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

the crime of either homicide or murder is committed NOT AS A RESULT OR ON THE OCCASION of the violation of Section 1, but WITH THE USE of an unlicensed firearm, whose possession is penalized therein. There is a world of difference, which is too obvious, between (a) the commission of homicide or murder as a result or on the occasion of the violation of Section 1, and (b) the commission of homicide or murder with the use

of an unlicensed firearm. In the first, homicide or murder is not the original purpose or primary objective of the offender, but a secondary event or circumstance either resulting from or perpetrated on the occasion of the commission of that originally or primarily intended. In the second, the killing, which requires a mens rea, is the primary purpose, and to carry that out effectively the offender uses an unlicensed firearm.

As to the question then of Mr. Justice Regalado of whether this Court should also apply the rule enunciated here to P.D. No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974), P.D. No. 533 (Anti-Cattle Rustling Law of 1974), and P.D. No. 534 (Defining Illegal Fishing and Prescribing Stiffer Penalties Therefor), the answer is resoundingly in the negative. In those cases, the lawmaker clearly intended a single integrated offense or a special complex offense because the death therein occurs as a result or on the occasion of the commission of the offenses therein penalized or was not the primary purpose of the offender, unlike in the second paragraph of Section 1 of P.D. No. 1866. Thus, (a) Section 3 of P.D. No. 532 provides:

SEC. 3. Penalties. -- Any person who commits piracy or highway robbery/brigandage as herein defined, shall, upon conviction by competent court be punished by:

a. Piracy. - The penalty of reclusion temporal in its medium and maximum periods shall be imposed. If physical injuries or other crimes are committed as a result or on the occasion thereof, the penalty of reclusion perpetua shall be imposed. If rape, murder or homicide is committed as a result or on the occasion of piracy, or when the offenders abandoned the victims without means of saving themselves, or when the seizure is accomplished by firing upon or boarding a vessel, the mandatory penalty of death shall be imposed.

b. Highway Robbery/Brigandage.-- The penalty of reclusion temporal in its minimum period shall be imposed. If physical injuries or other crimes are committed during or on the occasion of the commission of robbery or brigandage, the penalty of reclusion temporal in its medium and maximum periods shall be imposed. If kidnapping for ransom or extortion, or murder or homicide, or rape is committed as a result or on the occasion thereof, the penalty of death shall be imposed. (emphasis supplied)

(b) Section 8 of P.D. No. 533 reads in part as follows:

SEC. 8. Penal provisions. -- Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by prision mayor in its maximum period to reclusion temporal in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of reclusion perpetua to death shall be imposed. (emphasis supplied)

and (c) Section 3 of P.D. No. 534 reads as follows:

SECTION. 3. Penalties.-- Violations of this Decree and the rules and regulations mentioned in paragraph (f) of Section 1 hereof shall be punished as follows:

a. by imprisonment from 10 to 12 years, if explosives are used: Provided, that if the explosion results (1) in physical injury to person, the penalty shall be imprisonment from 12 to 20 years, or (2) in the loss of human life, then the penalty shall be imprisonment from 20 years to life, or death;

b. by imprisonment from 8 to 10 years, if obnoxious or poisonous substances are used: Provided, that if the use of such substances results (1) in physical injury to any person, the penalty shall be imprisonment from 10 to 12 years, or (2) in the loss of human life, then the penalty shall be imprisonment from 20 years to life, or death; x x x (emphasis supplied)

The unequivocal intent of the second paragraph of Section 1 of P.D. No. 1866 is to respect and preserve homicide

or murder as a distinct offense penalized under the Revised Penal Code and to increase the penalty for illegal possession of firearm where such a firearm is used in killing a person. Its clear language yields no intention of the lawmaker to repeal or modify, pro tanto, Articles 248 and 249 of the Revised Penal Code, in such a way that if an unlicensed firearm is used in the commission of homicide or murder, either of these crimes, as the case may be, would only serve to aggravate the offense of illegal possession of firearm and would not anymore be separately punished. Indeed, the words of the subject provision are palpably clear to exclude any suggestion that either of the crimes of homicide and murder, as crimes mala in se under the Revised Penal Code, is obliterated as such and reduced as a mere aggravating circumstance in illegal possession of firearm whenever the unlicensed firearm is used in killing a person. The only purpose of the provision is to increase the penalty prescribed in the first paragraph of Section 1 -- reclusion temporal in its maximum period to reclusion perpetua -- to death, seemingly because of the accused's manifest arrogant defiance and contempt of the law in using an unlicensed weapon to kill another, but never, at the same time, to absolve the accused from any criminal liability for the death of the victim.

Neither is the second paragraph of Section 1 meant to punish homicide or murder with death if either crime is committed with the use of an unlicensed firearm, i.e., to consider such use merely as a qualifying circumstance and not as an offense. That could not have been the intention of the lawmaker because the term "penalty" in the subject provision is obviously meant to be the penalty for illegal possession of firearm and not the penalty for homicide or murder. We explicitly stated in Tac-an:

There is no law which renders the use of an unlicensed firearm as an aggravating circumstance in homicide or murder. Under an information charging homicide or murder, the fact that the death weapon was an unlicensed firearm cannot be used to increase the penalty for the second offense of homicide or murder to death The essential point is that the unlicensed character or condition of the instrument used in destroying human life or committing some other crime, is not included in the inventory of aggravating circumstances set out in Article 14 of the Revised Penal Code.

A law may, of course, be enacted making the use of an unlicensed firearm as a qualifying circumstance. This would not be without precedent. By analogy, we can cite Section 17 of B.P. Blg. 179, which amended the Dangerous Drugs Act of 1972 (R.A. No. 6425). The said section provides that when an offender commits a crime under a state of addiction, such a state shall be considered as a qualifying aggravating circumstance in the definition of the crime and the application of the penalty under the Revised Penal Code.

In short, there is nothing in P.D. No. 1866 that manifests, even vaguely, a legislative intent to decriminalize homicide or murder if either crime is committed with the use of an unlicensed firearm, or to convert the offense of illegal possession of firearm as a qualifying circumstance if the firearm so illegally possessed is used in the commission of homicide or murder. To charge the lawmaker with that intent is to impute an absurdity that would defeat the clear intent to preserve the law on homicide and murder and impose a higher penalty for illegal possession of firearm if such firearm is used in the commission of homicide or murder.

Evidently, the majority did not, as charged in the concurring and dissenting opinion, create two offenses by dividing a single offense into two. Neither did it resort to the "unprecedented and invalid act of treating the original offense as a single integrated crime and then creating another offense by using a component crime which is also an element of the former." The majority has always maintained that the killing of a person with the use of an illegally possessed firearm gives rise to two separate offenses of (a) homicide or murder under the Revised Penal Code, and (b) illegal possession of firearm in its aggravated form.

What then would be a clear case of judicial legislation is an interpretation of the second paragraph of Section 1 of P.D. No. 1866 that would make it define and punish a single integrated offense and give to the words WITH THE USE OF a similar meaning as the words AS A RESULT OR ON THE OCCASION OF, a meaning which is

neither born out by the letter of the law nor supported by its intent. Worth noting is the rule in statutory construction that if a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation,[51] leaving the court no room for any extended ratiocination or rationalization of the law.[52]

Peregrinations into the field of penology such as on the concept of a single integrated crime or composite crimes, or into the philosophical domain of integration of the essential elements of one crime to that of another would then be unnecessary in light of the clear language and indubitable purpose and intent of the second paragraph of Section 1 of P.D. No. 1866. The realm of penology, the determination of what should be criminalized, the definition of crimes, and the prescription of penalties are the exclusive prerogatives of the legislature. As its wisdom may dictate, the legislature may even create from a single act or transaction various offenses for different purposes subject only to the limitations set forth by the Constitution. This Court cannot dictate upon the legislature to respect the orthodox view concerning a single integrated crime or composite crimes.

The only apparent obstacle to the imposition of cumulative penalties for various acts is the rule on double jeopardy. This brings us to the proposition in the dissenting opinion of Mr. Justice Regalado that the majority view offends the constitutional bar against double jeopardy under the "same-evidence" test enunciated in *People vs. Diaz*.^[53] He then concludes:

In the cases now before us, it is difficult to assume that the evidence for the murder in the first charge of aggravated illegal possession of firearm with murder would be different from the evidence to be adduced in the subsequent charge for murder alone. In the second charge, the illegal possession is not in issue, except peripherally and inconsequentially since it is not an element or modifying circumstance in the second charge, hence the evidence therefor is immaterial. But, in both prosecutions, the evidence on murder is essential, in the first charge because without it the crime is only simple illegal possession, and, in the second charge, because murder is the very subject of the prosecution. Assuming that all the other requirements under Section 7, Rule 117 are present, can it be doubted that double jeopardy is necessarily present and can be validly raised to bar the second prosecution for murder?

In fact, we can extrapolate the constitutional and reglementary objection to the cases of the other composite crimes for which a single penalty is imposed, such as the complex, compound and so-called special complex crimes. Verily, I cannot conceive of how a person convicted of estafa through falsification under Article 48 can be validly prosecuted anew for the same offense or either estafa or falsification; or how the accused convicted of robbery with homicide under Article 294 can be legally charged again with either of the same component crimes of robbery or homicide; or how the convict who was found guilty of rape with homicide under Article 335 can be duly haled before the court again to face charges of either the same rape or homicide. Why, then, do we now sanction a second prosecution for murder in the cases at bar since the very same offense was an indispensable component for the other composite offense of illegal possession of firearm with murder? Why would the objection of non bis in idem as a bar to a second jeopardy lie in the preceding examples and not apply to the cases now before us?

We are unable to agree to the proposition. For one, the issue of double jeopardy is not raised in this case. For another, the so-called "same-evidence" test is not a conclusive, much less exclusive, test in double jeopardy cases of the first category under the Double Jeopardy Clause which is covered by Section 21, Article III of the Constitution and which reads as follows:

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Note that the first category speaks of the same offense. The second refers to the same act. This was explicitly distinguished in *Yap vs. Lutero*,^[54] from where *People vs. Relova*^[55] quotes the following:

Thirdly, our Bill of Rights deals with two (2) kinds of double jeopardy. The first sentence of clause 20, Section 1, Article III of the Constitution, ordains that "no person shall be twice put in jeopardy of punishment for the same offense." (*italics in the original*) The second sentence of said clause provides that "if an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." Thus, the first sentence prohibits double jeopardy of punishment for the same offense whereas, the second contemplates double jeopardy of punishment for the same act. Under the first sentence, one may be twice put in jeopardy of punishment of the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include, the crime charged in the other case. The second sentence applies, even if the offenses charged are not the same, owing to the fact that one constitutes a violation of an ordinance and the other a violation of a statute. If the two charges are based on one and the same act, conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other. Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy of punishment for the same offense. So long as jeopardy has been attached under one of the informations charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction nor acquittal in either case.

Elsewise stated, where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the identity of offenses charged. The constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged.[56] The question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offenses involved.[57]

It may be noted that to determine the "same offense" under the Double Jeopardy Clause of the Fifth Amendment of the Constitution of the United States of America which reads:

[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . .

the rule applicable is the following: "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not." [58]

The Double Jeopardy Clause of the Constitution of the United States of America was brought to the Philippines through the Philippine Bill of 1 July 1902, whose Section 5 provided, *inter alia*:

[N]o person for the same offense shall be twice put in jeopardy of punishment . . .

This provision was carried over in identical words in Section 3 of the Jones Law of 29 August 1916.[59] Then under the 1935 Constitution, the Jones Law provision was recast with the addition of a provision referring to the same act. Thus, paragraph 20, Section 1, Article III thereof provided as follows:

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

This was adopted verbatim in Section 22, Article IV of the 1973 Constitution and in Section 21, Article III of the present Constitution.

This additional-element test in *Lutero and Relova* and in *Blockburger, Gore, and Missouri* would safely bring the second paragraph of Section 1 of P.D. No. 1866 out of the proscribed double jeopardy principle. For, undeniably, the elements of illegal possession of firearm in its aggravated form are different from the elements of homicide or murder, let alone the fact that these crimes are defined and penalized under different laws and the former is *malum prohibitum*, while both the latter are *mala in se*. Hence, the fear that the majority's construction of the

subject provision would violate the constitutional bar against double jeopardy is unfounded.

The penalty which the trial court imposed in Criminal Case No. 8179 for illegal possession of firearm in its aggravated form must, however, be modified. The penalty prescribed by P.D. No. 1866 is death. Since Section 19(1), Article III of the Constitution prohibits the imposition of the death penalty, the penalty next lower in degree, reclusion perpetua, must be imposed.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of 30 September 1993 of Branch 1 of the Regional Trial Court of Bohol finding accused-appellant DANIEL QUIJADA y CIRCULADO guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 8178 and of illegal possession of firearm in its aggravated form in Criminal Case No. 8179 is AFFIRMED. The penalty imposed in the first case, as amended by the Order of 29 October 1993, is sustained; however, the penalty imposed in the second case is changed to Reclusion Perpetua from the indeterminate penalty ranging from Seventeen (17) years, Four (4) months, and One (1) day, as minimum, to Twenty (20) years and One (1) day, as maximum.

Costs de oficio.

SO ORDERED.

Padilla, Bellosillo, Melo, Francisco, Panganiban, and Torres, Jr., JJ., concur.

Narvasa, C.J., Romero, Puno, Vitug, Kapunan, Mendoza, JJ., joined J.

Regalado in his concurring and dissenting opinion.

Regalado, J., see concurring and dissenting opinion.

Hermosisima, J., see concurring opinion.

Hermosisima, J., see concurring opinion.

[1] Original Records (OR), Criminal Case No. 8178, 71-80; Rollo, 7-15. Per Judge Antonio H. Bautista.

[2] 182 SCRA 601 [1990].

[3] 198 SCRA 368 [1991].

[4] 208 SCRA 821 [1992.]

[5] 221 SCRA 333 [1993].

[6] 231 SCRA 520 [1994].

[7] 236 SCRA 458 [1994].

[8] 239 SCRA 174 [1994].

[9] 244 SCRA 731 [1995].

[10] 245 SCRA 312 [1995].

[11] OR, Criminal Case No. 8178, 31-32; Rollo, 3.

[12] Id., Criminal Case No. 8179, 14; Id., 4.

[13] Rollo, 81-85.

- [14] Exhibit "A" (Medico-Legal Certificate issued by Dr. Gregg Julius Sodusta), Folder of Exhibits, 1.
- [15] Exhibit "A", Folder of Exhibits, 1 (see note 14).
- [16] Exhibit "C-1", Id., 4.
- [17] Exhibit "C", Id., 3.
- [18] OR, Criminal Case No. 8178, 76; Rollo, 11.
- [19] OR, Criminal Case No. 8178, 79-80; Rollo, 14-15.
- [20] OR, Criminal Case No. 8178, 81.
- [21] Id., 82.
- [22] Rollo, 42-43.
- [23] TSN, 8 June 1993, 29.
- [24] TSN, 8 June 1993, 10-12.
- [25] Id., 31.
- [26] *People vs. De Guzman*, 188 SCRA 407 [1990]; *People vs. De Leon*, 245 SCRA 538 [1995]; *People vs. Delovino*, 247 SCRA 637 [1995].
- [27] *People vs. Delovino*, supra, note 26, citing *Creamer vs. Bivert*, 214 MO 473, 474 [1908], cited in M. FRANCES MCNAMARA, 200 Famous Legal Quotations [1967], 548.
- [28] *People vs. Fernandez*, 209 SCRA 1 [1992]; *People vs. Pablo*, 213 SCRA 1 [1992]; *People vs. Casinillo*, 213 SCRA 777 [1992]; *People vs. Gomez*, 235 SCRA 444 [1994].
- [29] Section 3 (m), Rule 13, Rules of Court.
- [30] *People vs. Taneo*, 218 SCRA 494 [1993]; *People vs. Kyamko*, 222 SCRA 183 [1993]; *People vs. Enciso*, 223 SCRA 675 [1993]; *People vs. Pamor*, 237 SCRA 462 [1994].
- [31] *People vs. Penillos*, 205 SCRA 546 [1992]; *People vs. Florida* 214 SCRA 227 [1992]; *People vs. Castor*, 216 SCRA 410 [1992]
- [32] TSN, 30 July 1993, 3-4.
- [33] Article 13 (7), Revised Penal Code.
- [34] *People vs. Comia*, 236 SCRA 185 [1994]; *People vs. Enciso*, supra, note 30.
- [35] Supra note 2.
- [36] Supra note 3.
- [37] Supra note 4.
- [38] Supra note 5.
- [39] Supra note 6.
- [40] Supra note 7.

[41] Supra note 8.

[42] Supra note 9.

[43] Supra note 10.

[44] 233 SCRA 716 [1994].

[45] 50 Am. Jur., Statutes, § 229, 214-215. See RUPERTO G. MARTIN, Statutory Construction [1979], 2.

[46] Articles 248 and 249, respectively, Revised Penal Code.

[47] Article 3, Id.

[48] Any penal law punishing acts which are not treated and penalized by the Revised Penal Code is a special penal law (U.S. vs. Serapio, 23 Phil. 584 [1912]; GUILLERMO B. GUEVARRA, Penal Sciences and Philippine Criminal Law [1974], 24).

[49] Veroy vs. Layague, 210 SCRA 97 [1992]; People vs. Jumamoy, supra, note 5; People vs. De Gracia, supra, note 44.

[50] People vs. De Gracia, supra note 44.

[51] Victoria vs. COMELEC, 229 SCRA 269 [1994].

[52] Libanan vs. Sandiganbayan, 233 SCRA 163 [1994].

[53] 94 Phil. 714 [1954].

[54] 105 Phil. 1307 [1959].

[55] 148 SCRA 292, 303-304 [1987].

[56] People vs. Relova, supra note 55.

[57] Id., at 306.

[58] Blockburger vs. United States, 284 U.S. 299-305 [1932]; Gore vs. U.S., 357 U.S. 386, 2 L ed 2d 1405, 78 S Ct 1280 [1958]; Missouri vs. Hunter, 459 U.S., 359, 74 L Ed 2d 535, 103 S Ct 673 [1983].

[59] People vs. Relova, supra, note 55, at 301. See also, VICENTE M. MENDOZA, From McKinley's Instructions to the New Constitution: Documents on the Philippine Constitutional System [1978], 80, 118.

CONCURRING OPINION
HERMOSISIMA, JR., J.,

Murder, most foul for betraying a depraved heart, is the inordinate killing of a human being, unlawfully and with premeditated malice, willfully, deliberately, a felony described in and penalized under Article 248 of the Revised Penal Code.

On the other hand, the unlawful possession of an unlicensed firearm, that artifice consisting essentially of a straight tube to propel a shot, shell or bullet by the explosion of gunpowder, is penalized as the offense of Illegal Possession of Unlicensed Firearm by Presidential Decree No. 1866 of martial law vintage.

Against accused-appellant Daniel Quijada y Circulado were filed the two aforesaid cases: Murder, Criminal Case No. 8178 and Illegal Possession of an Unlicensed Firearm, Criminal Case No. 8179 "which firearm was

carried by the said accused outside of his residence and was used by him in committing the crime of murder" in violation of paragraph 2, Section 1, of Presidential Decree (P.D.) No. 1866. After a joint trial, the trial court convicted accused-appellant in both cases and sentenced him to suffer the penalty of Reclusion Perpetua for the crime of Murder and imprisonment a period of Seventeen (17) Years, Four (4) Months and One (1) Day, as minimum, to Twenty (20) Years and One (1) Day, as maximum, for the offense of Qualified Illegal Possession of Unlicensed Firearm penalized under the aforesaid P.D. No. 1866.

There is no question that, as found by the majority, the crime of Murder and the offense of Illegal Possession of Firearm had been established by evidence beyond the shadow of doubt.

While the majority affirms the twin conviction of the accused-appellant in both Criminal Case No. 8178 for Murder and Criminal Case No. 8179 for Illegal Possession of an Unlicensed Firearm, the minority asserts the dissenting opinion that, as in *People vs. Barros*,^[1] accused-appellant may only be convicted of the offense of Illegal Possession of Unlicensed Firearm in its aggravated form, inferring that the crime of Murder has been absorbed by that offense or rather that the two (2) crimes may be said to have been complexed with each other.

While the teleological debate on whether criminal punishment is justified as retribution or as reformation continually rages, hardly disputable is the static view and unchanged reality that the primordial justification for punishing any man is that he has broken the law. While in Anglo-American jurisdictions, there exist what are known as common law offenses, in our jurisdiction, no act is a crime unless it is made so by statute.^[2] Every law enacted by the legislature for the restraint and punishment of crimes and for the preservation of the public peace, health and morals comes within the police power of the State.^[3]

"The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights."^[4]

In the exercise of its right, duty and power to determine and define crimes and their corresponding penalties, the lawmaking body is initially and usually guided by the general condition of penal liability under the legal maxim, "actus non facit reum, nisi mens sit rea," which, if freely translated, means that "an act is not criminal unless the mind is criminal." On the basis of this, which is commonly known as the mens rea doctrine, our Revised Penal Code was enacted to largely penalize unlawful acts accompanied by evil intent which are denominated en masse as crimes mala in se. The paramount consideration here is the existence of a malicious intention borne out by the concurrence of freedom, intelligence and intent which altogether make up the "criminal mind" behind the resultant criminal act."

It is not always, however, that the evil to society anent a criminal act depends upon the state of mind of the offender. And no less valid, critical and indispensable is the prerogative of the legislature, through special enactments, to forbid the doing of a particular act and legislate the commission of such act to be a crime, regardless of the intent of the doer.

"In many crimes, made by statutory enactment, the intention of the person who commits the crime is entirely immaterial. This is necessarily so. If it were not, the statute as a deterrent influence would be substantially worthless. It would be impossible of execution. In many cases the act complained of is itself that which produces the pernicious effect which the statute seeks to avoid. In those cases, the pernicious effect is produced with precisely the same force and result whether the intention of the person performing the act is good or bad. x x x It is quite different from that large class of crimes, made such by the common law or by statute, in which the injurious effect upon the public depends upon the corrupt intention of the person perpetrating the act."^[5]

In general, it may be said that there must be *malus animus* or a criminal intent. But there is also a class of crimes known as crimes *mala prohibita* which, on the broad grounds of public policy, criminalize certain acts without the usual requisite proof of the intent of the actor to commit the crime.

"In the case of *The State vs. McBrayer* (98 N.C., 623) this court stated:

'It is a mistaken notion that positive, willful intent to violate the criminal law is an essential ingredient in every criminal offense, and that where there is an absence of such intent there is no offense; this is especially true as to statutory offenses. When the statute plainly forbids an act to be done, and it is done by some person, the law implies conclusively the guilty intent, although the offender was honestly mistaken as to the meaning of the law he violates. When the language is plain and positive, and the offense is not made to depend upon the positive, willful intent and purpose, nothing is left to interpretation.'

xxx xxx xxx

Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act. The accused did not consciously intend to commit a crime; but he did intend to commit an act, and that is, by the very nature of things, the crime itself-intent and all. The working of the law is such that the intent and the act are inseparable. The act is the crime."[6]

Indeed, to distinguish between crimes *mala in se* and *mala prohibita* by simply pointing out that the former refer to felonies in the Revised Penal Code while the latter are punished under special laws, does not amount to much, for there are indeed felonies that are penalized regardless of the felon's criminal intentions, and conversely, there are also special offenses that require proof of criminal intent.

Whether or not in a given case the statute is to be construed as forbidding the doing of an act and criminalizing the same without regard to the intent of the perpetrator of the act, is to be determined by the court by considering the subject matter of the prohibition as well as the language of the statute, thereby ascertaining the intention of the lawmaker. The index of whether or not a crime is *malum prohibitum* is not its form, that is, whether or not it is found in the Revised Penal Code or in a special penal statute, but the legislative intent that underlies its continuing existence as part of the law of the land.

"Considering the nature of the offense, the purpose to be accomplished, the practical methods available for the enforcement of the law, and such other matters as throw light upon the meaning of the language, the question in interpreting a criminal statute is whether the intention of the legislature was to make knowledge of the facts an essential element of the offense, or to put upon everyone the burden of finding out whether his contemplated act is prohibited, and of refraining from it if it is."[7]

In this light, we have not just a few times precisely delineated the *malum prohibitum* nature of P.D. No. 1866, which is a codification of the laws on unlawful possession of unlicensed firearms, among others.

As has been aforesaid, in determining whether or not an offense is *malum prohibitum* or not, the relevant inquiry must concern the legislative intent as to the requirement of criminal intent or lack thereof. In this respect, the discussion of Justice Regalado in *People vs. De Gracia*[8] is appropriate:

"The first issue to be resolved is whether or not intent to possess is an element of the offense punishable under Presidential Decree No. 1866 and, if so, whether appellant x x x did intend to illegally possess firearms and ammunition.

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition x x x.

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 since the offense of 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 the 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 did intend 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."^[9]

In its enactment, P.D. No. 1866 was undoubtedly intended as a substantial measure in response to the perennial problem of law enforcement and public order and safety. Thus, we always pointed out that P.D. No. 1866 was passed because of an upsurge of crimes vitally affecting public order and safety due to the proliferation of illegally possessed and manufactured firearms, which crimes have resulted in loss of human lives, damage to property and destruction of valuable resources of the country.^[10]

The aforecited public policy concern justified the blanket prohibition in P.D. No. 1866 against mere possession of unlicensed firearms, among others, without regard to the criminal intent of the possessor. Indeed, what is being punished is the illegal possession, among others, of unlicensed firearms.

"What the decree does is to define the offense and provide for the penalty that may be imposed, specifying the qualifying circumstances that would aggravate the offense. There is no encroachment on the power of the court to determine after due hearing whether the prosecution has proved beyond reasonable doubt that the offense of illegal possession of firearms has been committed and that the qualifying circumstances attached to it has been established also beyond reasonable doubt as the Constitution and judicial precedents require."^[11]

Insofar as material to the present case, what is penalized is the sole, simple act of a person who shall, among others, it unlawfully possess any firearm." The gravamen of the offense is the fact of possession of a firearm without a license or authority for such possession.^[12] It is only the offense of Illegal Possession of Unlicensed Firearm that is, in the corporeal and material sense, provided for and defined in Section 1 of P.D. No. 1866. The penalty therefor, however, is another matter.

It is undisputed that P.D. No. 1866 was validly enacted in 1983 in the exercise of legislative powers by then President Marcos under the 1973 Constitution, which powers inherently included the prerogative to prohibit certain acts perceived by the lawmaker to be substantially prejudicial to the public interest. Thus, Section 1 forbids the possession by any person of a firearm for which he does not have the proper license and/or authority. The sole act forbidden, prohibited and thereby criminalized is the illegal possession of an unlicensed firearm. That is all. However, while the offense penalized is singular, the penalties for such offense are plural and are distinguished from each other by certain circumstances which the lawmaker considered to be valid reasons to impose penalties heavier than the others. Thus, as a whole, the pertinent portion of said decree provides to wit:

"Section 1. Unlawful manufacture, Sales, 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 firearms, 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.

If the violation of this Section is in furtherance of, or incident to, or in connection with crimes of rebellion, insurrection, or subversion, the penalty of death shall be imposed.

xxx xxx xxx"[13]

The circumstances (1) that homicide or murder is committed with the use of an unlicensed firearm and (2) that the illegal possession of unlicensed firearm is committed in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, only qualify or aggravate the offense of Illegal Possession of Unlicensed Firearm for purposes of increasing the penalty therefor. These circumstances do not create another offense or a special kind of illegal possession or another form of illegal possession. When either of such circumstances is attendant under the premises of a case, such circumstance only authorizes and justifies the imposition of a higher penalty. It only has the effect of upgrading the penalty and not of supplying an additional, separate element of a new or another offense. Thus, there is no such thing as a special complex crime of illegal possession of unlicensed firearm used in homicide,[14] or murder for that matter. Neither could we have conceived what we have been calling the aggravated form of illegal possession[15] or qualified illegal possession,[16] to be a separate, distinct and independent offense from illegal possession without any qualifying circumstance. Even Justice Regalado concedes in his Separate Opinion in *People vs. Barros*[17] that "the nomenclature of aggravated illegal possession is used just for expediency, in the same manner as that of 'qualified rape' under Article 335 when the sexual assault is attended by the circumstances therein which result in increase penalties."

In *People vs. Barros*,[18] we were mainly concerned with the issue as to whether or not, whenever a killing is effected with the use of an unlicensed firearm, the malefactor should be punished separately for both offenses, with the unlawful taking of life to be proceeded against under the corresponding provision of the Revised Penal Code and the illegal possession of the firearm under P.D. No. 1866. There, we decided that said malefactor ought only to be punished for qualified illegal possession of firearm essentially because the two crimes are not altogether separate or disconnected from each other both in law and in fact and could thus be viewed as a situation bordering close to or approximating the concept of complex crime proper and/or as a situation where the graver offense (of qualified illegal possession) can be said to have absorbed the lesser offense (of homicide or murder) which constitutes the essential element siring the so-called "capital offense of the aggravated form of illegal possession."

There is no time more appropriate to re-examine the *Barros* ruling than now, for to persist in it would result in an absurd situation that cannot be justified even under the hallowed principle of *stare decisis*.

Merely that two crimes are not altogether separate or disconnected from each other both in law and in fact, is of no moment. In the first place, should they in law and in fact be altogether separate or disconnected from each other to foreclose their absorption into or complexing with, each other? In the second place, that very statement provides a basic presumption and reality that must be fully understood insofar as its implications and consequences are concerned. They are precisely two crimes, and these two crimes are punished under two separate, distinct and independent laws. Punishment is a corollary of lawbreaking by a member of society whose law is broken.[19] In this case, there are two separate laws involved, two separate crimes punished by two laws,

and two counts of breaking the law constituting two crimes for which two separate penalties are provided. Concededly, accused-appellant performed only one action which was made basis for two Informations each charging a distinct offense. But it is also a well-established rule in this jurisdiction that

"a single act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased otherwise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other." [20]

Where there are, as in this case, two crimes punished by two distinct laws enacted for absolutely different purposes, and both laws are clear and unambiguous, and no absurdity or unreasonableness is evident from the application of both, it is not the proper function of the court to change or alter in any way the state of things thereunder. That it is desirable, equitable, wise, humane or charitable to find a way to decrease the penalty or avoid imposition of the penalties under the two laws, is not denied, but at most we can only "legislate interstitially x x x confined from molar to molecular motions" [21] and clear up ambiguities or fill in the gaps. Gaps in our conscience and our personal convictions must be found and provided some other legitimate channel for expression and realization.

The law on complex crime proper is not applicable here. One of the reasons often cited in proscribing complexing a crime under the Revised Penal Code and an offense under a special law is that the latter is not punishable by a penalty divisible into periods. Now following our ruling in *People vs. Simon*, [22] the suppletory effect of the Revised Penal Code upon P.D. No. 1866 is now starkingly broadened because though it is a special penal law, the penalties provided therein are actually taken from the Revised Penal Code in their technical nomenclature, duration, correlation and legal effects, such that the same treatment as that respecting Revised Penal Code penalties may now be given to penalties under certain special laws.

However, notwithstanding the import of our ruling in the said case of *People vs. Simon*, it still cannot be said that there is no longer any obstacle in complexing murder with qualified illegal possession because the very essence and nature of each of these crimes remains unchanged and unaffected. Murder, or for that matter, homicide, remains distinct from the crime of Illegal Possession of Unlicensed Firearm where the firearm is used in perpetrating the killing. The defendant in such cases committed two different acts with two separate criminal intents, to wit, the desire to take unlawfully the life of a person and the sheer violation of the law which prohibits the possession of a firearm without the required permit. [23] In other words, there is in this instant case a case of plurality of crimes where accused-appellant performed one act which resulted in two different crimes penalized under two separate laws which have distinct purposes and are independent from each other.

Neither does the doctrine of absorption obtain in this case. For absorption to take place under the circumstances thereof, there must be two materially distinct and separate offenses involved -- murder and what has been referred to as the capital offense of the aggravated form of illegal possession of unlicensed firearm. As has been explained hereinabove, however, the offense defined in Section 1 of P.D. No. 1866 is plainly, simply illegal possession of unlicensed firearm. The circumstance of homicide or murder only operates to upgrade the penalty for the offense of illegal possession of unlicensed firearm and does not as it has not been intended to, sire and penalize a second offense or the so-called capital offense of the aggravated form of illegal possession of unlicensed firearm. The offense of illegal possession, as such, in turn, cannot validly absorb murder or homicide because the latter is not an element of the former. Nothing more indubitably evidences the intent of the legislature to maintain the integrity and effectivity of the penal provision for murder and homicide, on the one hand, and of Section 1 of P.D. No.

1866, on the other, than the very pertinent provision of said decree which neither created any special complex crime nor amended nor repealed the provisions on murder or homicide nor defined a separate offense of an aggravated form of illegal possession.

We are not unaware of the fundamental legal principle that every doubt in the construction of a criminal statute should be resolved in favor of any person accused of a crime. To mete out a lesser penalty is certainly favorable to an accused; such, however, presupposes the existence of some doubt in the application of the law pertinent to his circumstances. In the instant case, there is no ambiguity, ambivalence, confusion, doubt or question respecting the applicable laws. The penalties provided for by the Revised Penal Code for the crime of Murder and by P.D. No. 1866 for the offense of Illegal Possession of Unlicensed Firearm are not under attack. And it could not also be said that the application of said laws and the imposition of said penalties bring about an undeniable situation characterized by such absurdity, unreasonableness, and socially, morally or philosophically virulent consequences as to justify the utter disregard of said laws and their substantive provisions regarding penalties. Certainly, there must be a limit to what the court may do to remedy what it perceives as a difficult but avoidable situation. The consequences of the application of our valid, subsisting laws, after all, do not always have to satisfy our own standards of what is just and fair.

Finally, with the enactment of Republic Act (R.A.) No. 7659[24] reimposing the death penalty for certain heinous crimes, an anomalous situation may emerge in our midst if we apply *Barros*. Said Act enumerated particular crimes under the Revised Penal Code and specific offenses under special laws that shall henceforth contain provisions imposing the death penalty under certain circumstances. One of the crimes enumerated thereunder is Murder, which may now be punished by death.[25] The death penalty may now also be meted out in, among others, the case of drug-related crimes as provided for in the Dangerous Drugs Act of 1972[26] and the crimes provided for in the Anti-Carnapping Act of 1972.[27]

Of utmost significance is the fact that not included in the enumeration of special offenses where the death penalty has been revived, is P.D. No. 1866. R.A. 7659 being a penal statute which must, as a rule, be strictly construed against the State, the inescapable and inevitable conclusion is that Congress, in enacting R.A. No. 7659, did not intend to revive the death penalty provision found in the second and third paragraphs of Section 1 of P.D. No. 1866.

The foregoing makes for a tremendous import. On the one hand, were we to insist that murder may be complexed with or absorbed by illegal possession of unlicensed firearm where said firearm is used in the commission of murder or homicide, a person convicted for said offense may only be punished with a penalty no higher than reclusion perpetua since R.A. No. 7659 did not revive the death penalty provision in Section 1 of P.D. No. 1866. On the other hand, a person who has used a licensed firearm in committing murder may be punished with death if there were sufficient aggravating circumstances attendant in the killing, since R.A. No. 7659 restored the death penalty for the crime of murder. No much deeper analysis is needed to realize that an anomalous, absurd situation confronts us where the use of an unlicensed firearm in killing is rewarded by a lesser penalty. Herein lies real injustice. And we cannot scale down this resounding message which indifference on our part would impart: if "would be" criminals were to kill, they ought to kill with unlicensed firearms so that they will fall within the purview of P.D. No. 1866 with respect to which the death penalty has not been restored and not within the provisions of the Revised Penal Code for murder, for then depending upon the nature and number of the aggravating circumstances that may attend such crimes, they face the possibility of being sentenced to death, an eventuality that could never be under P.D. No. 1866.

Certainly, we cannot close our eyes to this absurd situation, and it will be irresponsible of us to allow the absurdity to persist. We should not stubbornly cling to the illusion that murder and illegal possession of

unlicensed firearm used in murder may be complexed with each other or absorbed into each other. Anyway, they are not so disconnected from each other that doing so would translate into a lower penalty. For us to cling to such an illusion would be tantamount to a complete disregard of legal concepts and principles in the realm of crime and punishment that has remain good, sound, valid law.

WHEREFORE, the conviction of the accused by the court a quo of the two (2) crimes aforesaid, that is, for Murder and Illegal Possession of Unlicensed Firearm, should be, as it is, affirmed.

[1] 245 SCRA 312.

[2] Aquino, Ramon, The Revised Penal Code, 1987 Edition, p. 7.

[3] People vs. Pomar, 46 Phil. 440, 455.

[4] United States vs. Pablo, 35 Phil. 94, 100.

[5] United States vs. Go Chico, 14 Phil. 128, 131.

[6] Ibid., pp. 136, 138.

[7] Ibid., p. 135.

[8] 233 SCRA 716.

[9] People vs. De Gracia, supra, at pp. 725-726.

[10] People vs. De Gracia, supra, 725; Separate Opinion of Justice Regalado in People vs. Barros, 245 SCRA 312, 325; People vs. Tiozon, 198 SCRA 368, 379; Baylosis vs. Chavez, 202 SCRA 405,412.

[11] Misolas vs. Panga, 181 SCRA 648, 659-660.

[12] People vs. Caling, 208 SCRA 821, 826; People vs. Somooc, 244 SCRA 731, 738.

[13] P.D. No. 1866.

[14] People vs. Caling, supra; People vs. Somooc, supra.

[15] People vs. Caling, supra.

[16] People vs. De Gracia, 233 SCRA 716, 732.

[17] People vs. Barros, 245 SCRA 312, 324.

[18] 245 SCRA 312.

[19] Mabbott, J.D., "Punishment," in Morality in Criminal Justice by Daryl Close and Nicholas Meier, 1995 Edition, p. 434.

[20] People vs. Doriguez, 24 SCRA 163, 171-172.

[21] Southern Pacific Co. vs. Jensen, 244 U.S. 205, 221.

[22] 234 SCRA 555.

[23] People vs. Alger, 92 Phil. 227; People vs. Garcia, 92 Phil. 195; People vs. Maalihan, 53 Phil. 295; United States vs. Labai, 17 Phil. 240.

[24] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, other Special Penal Laws, and for Other Purposes."

[25] Section 6, Republic Act No. 7659.

[26] Republic Act No. 6425, as amended.

[27] Republic Act No. 6539.

CONCURRING AND DISSENTING OPINION:

REGALADO, J.,

I concur in the majority opinion only insofar as it holds accused-appellant Daniel Quijada y Circulado guilty of the crime of murder with the use of an illegally possessed firearm and punishes him therefor. I confess, however, that I cannot in conscience reconcile myself with the unfortunate doctrine first announced in *People vs. Tac-an*,^[1] and now reiterated by the majority, that said appellant should be twice penalized for two supposedly distinct offenses involving (1) the murder of the victim with an illegally possessed firearm, under Presidential Decree No. 1866 and (2) the same murder of that same victim, this time under Article 248 of the Revised Penal Code.

I have heretofore rejected this very same dual verdicts of conviction in my concurring opinion in *People vs. Barros*,^[2] which found favor with all my brethren in the Second Division, including Chief Justice Andres R. Narvasa acting as the ponente of the decision in that case and in his capacity as the Chairman of that Division. Indeed, I feel quite strongly that through the play on words that illegal possession of firearm used in a killing is punishable under Presidential Decree No. 1866, while the same killing with the same illegally possessed firearm is separately punished under Article 248 of the Revised Penal Code, we have been beguiled by the semantical tyranny of shifting emphases.

I endeavored to analyze what I considered the error of that approach and thereby expose the speciously camouflaged theory espoused in *Tac-an* which I believe, and still do, constitutes an affront on doctrinal concepts of penal law and assails even the ordinary notions of common sense. To avoid excursive reading, I quote my humble explanation in *Barros* somewhat at length:

Under the dispositions heretofore made by the Court involving the crimes of homicide or murder through the use of an illegally possessed firearm, and the same is true with the case at bar, the following queries may be posed:

1. Should the crimes of homicide or murder, which are the end results, be punished separately from and in addition to the liability for illegal possession of the firearm as the instrument or the means employed?
2. On the other hand, should not the principal sole offense be the aggravated form of illegal possession of a firearm under the second paragraph of Section 1 of Presidential Decree No. 1866, with the homicide or murder being absorbed therein as an integral element of the crime in its aggravated form?
3. If either homicide or murder and illegal possession of firearm are so charged in one and the same information, should they be considered and punished as a single offense of homicide or murder with the use of an unlicensed firearm, or as a case of aggravated illegal possession of firearm resulting in homicide or murder, with the death penalty to be imposed in either case?
4. If homicide or murder is charged in a separate information while aggravated illegal possession of firearm is made the subject of a separate indictment filed simultaneously with or prior or subsequent to the former, but with the respective informations on the killing and the illegal possession mutually alleging facts regarding the other offense as an attendant circumstance, should the accused be held liable for two distinct crimes regardless of whether the cases are jointly tried by the same court or separately by the two courts where- the informations

were independently filed?

On the first question, it is true that from the theoretical concept of the requisite mens rea, the killing as the result of the criminal design arose from a specific criminal intent, that is, the animus interficendi or intent to kill. The illegal possession of the firearm requires a discrete and specific intent to possess the weapon, which is the animus possidendi, coupled with the physical possession thereof.

It would, therefore, appear at first blush that the two offenses having arisen from different criminal intents, this would be, under the philosophical bases for concurso de delitos, a case of material or real plurality under which different crimes have been committed and for each of which a separate criminal liability attaches. The flaw in this approach, however, is that although two crimes have been committed, they are not altogether separate or disconnected from each other both in law and in fact. The illegally possessed firearm having been the weapon used in the killing, the former was at least the necessary, although not an indispensable, means to commit the other.

The situation thus borders closer to the concept of complex crime proper, technically known as a delito complejo, rather than to the postulate of two separate crimes. It is true that former doctrines were to the effect that there can be no complex crime where one of the component offenses is punished by a special law. The rationale therefore was that in a complex crime, Article 48 of the Code prescribes that the penalty shall be for the graver offense to be applied in its maximum period. Since, at that time, the penalties for crimes provided in special laws were not divided into periods, it would be impossible to apply Article 48.

That ratiocination no longer applies now, specifically with respect to the case at bar, since the penalties in Presidential Decree No. 1866 were all taken from the scale of penalties in the Code. The only possible difficulty in this novatory approach would be on the first kind of complex crime, that is, the delito compuesto since it exists "(w)hen a single act constitutes two or more grave or less grave felonies." The use of that particular term for the delicts committed bars the application of that form of complex crime to offenses under Presidential Decree No. 1866, since "felonies" are offenses provided and defined in the Code.

That objection would not, however, apply to a delito complejo since it is sufficient therefor that "an offense is a necessary means for committing the other." By these considerations, however, the writer does not mean to imply that a killing through the use of an illegally-possessed firearm is a delito complejo under Article 48 of the Code. As was carefully stated, such an offense merely borders closer to or approximates the concept of a delito complejo, but it thereby emphasizes the thesis that the offenses should not be considered as separate crimes to be individually punished under the principle of material plurality.

This premise accordingly brings up the second query as to whether or not the crime should properly be the aggravated illegal possession of an unlicensed firearm through the use of which a homicide or murder is committed. It is submitted that an accused so situated should be liable only for the graver offense of aggravated illegal possession of the firearm punished by death under the second paragraph of Section 1, Presidential Decree No. 1866, and it is on this point that the writer dissents from the holding which would impose a separate penalty for the homicide in addition to that for the illegal possession of the firearm used to commit the former.

If the possession of the unlicensed firearm is the only offense imputable to the accused, the Court has correctly held that to be the simple possession punished with reclusion temporal in its maximum period to reclusion perpetua in the first paragraph of Section 1. Where, complementarily, the unlicensed firearm is used to commit homicide or murder, then either of these felonies will convert the erstwhile simple illegal possession into the graver offense of aggravated illegal possession. In other words, the homicide or murder constitutes the essential element for integrating into existence the capital offense of the aggravated form of illegal possession of a firearm.

Legally, therefore, it would be illogical and unjustifiable to use the very same offenses of homicide or murder as integral elements of and to create the said capital offense, and then treat the former all over again as independent offenses to be separately punished further, with penalties immediately following the death penalty to boot.

The situation contemplated in the second query is, from the punitive standpoint, virtually of the nature of the so-called "special complex crimes," which should more appropriately be called composite crimes, punished in Article 294, Article 297 and Article 335. They are neither of the same legal basis as nor subject to the rules on complex crimes in Article 48, since they do not consist of a single act giving rise to two or more grave or less grave felonies nor do they involve an offense being a necessary means to commit another. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses.

On the other hand, even if two felonies would otherwise have been covered by the conceptual definition of a complex crime under Article 48, but the Code imposes a single definite penalty therefor, it cannot also be punished as a complex crime, much less as separate offenses, but with only the single penalty prescribed by law. Thus, even where a single act results in two less grave felonies of serious physical injuries and serious slander by deed, the offense will not be punished as a *delito compuesto* under Article 48 but as less serious physical injuries with ignominy under the second paragraph of Article 265. (*People vs. Lasala*, L-12141, January 30, 1962, 4 SCRA 61.) The serious slander by deed is integrated into and produces a graver offense, and the former is no longer separately punished.

What is, therefore, sought to be stressed by such alternative illustration, as well as the discussion on complex and composite crimes, is that when an offense becomes a component of another, the resultant crime being correspondingly punished as thus aggravated by the integration of the other, the former is not to be further separately punished as the majority would want to do with the homicide involved in the case at bar.

With the foregoing answers to the second question, the third inquiry is more of a question of classification for purpose of the other provisions of the Code. The theory in *Tac-an* that the principal offense is the aggravated form of illegal possession of firearm and the killing shall merely be included in the particulars or, better still, as an element of the principal offense, may be conceded. After all, the plurality of crimes here is actually sourced from the very provisions of Presidential Decree No. 1866 which sought to "consolidate, codify and integrate" the various laws and presidential decrees to harmonize their provisions" which "must be updated and revised in order to more effectively deter violators" of said laws.

This would be akin to the legislative intent underlying the provisions of the Anti-Carnapping Act of 1972 (R.A. No. 6539, August 26, 1972), wherein the principal crime to be charged is still carnapping, although the penalty therefore is increased when the owner, driver or occupant of the carnapped vehicle is killed. The same situation, with escalating punitive provisions when attended by a killing, are found in the Anti-Piracy and Anti-Highway Robbery Law of 1974 (P.D. No. 532, August 8, 1974) and the Anti-Cattle Rustling Law of 1974 (P.D. No. 533, August 8, 1974), wherein the principal crimes still are piracy, highway robbery and cattle rustling. Also, in the matter of destructive arson (Article 320, Revised Penal Code, as last amended by R.A. No. 7659), the principal offense remains as arson although the same becomes a capital offense when *inter alia*, death results as a consequence of the commission of any of the acts punished under said article of the Code.

In the present case, the academic value of specifying whether it is a case of illegal possession of firearm resulting in homicide or murder, or, conversely, homicide or murder through the illegal possession and use of an unlicensed firearm, would lie in the possible application of the provision on recidivism. Essentially, it would be in the theoretical realm since, taken either way, the penalty for aggravated illegal possession of a firearm is the single

indivisible penalty of death, in which case the provision on recidivism would not apply. If, however, the illegal possession is not established but either homicide or murder is proved, then the matter of recidivism may have some significance in the sense that, for purposes thereof, the accused was convicted of a crime against persons and he becomes a recidivist upon conviction, or another crime under the same title of the Code.

Lastly, on the matter of the offense or offenses to be considered and the penalty to be imposed when the unlawful killing and the illegal possession are charged in separate informations, from what has been said the appropriate course of action would be to consolidate the cases and render a joint decision thereon, imposing a single penalty for aggravated illegal possession of firearm if such possession and the unlawful taking of life shall have been proved, or for only the proven offense which may be either simple illegal possession, homicide or murder per se. The same procedural rule and substantive disposition should be adopted if one information for each offense was drawn up and these informations were individually assigned to different courts or branches of the same court.

Indeed, the practice of charging the offense of illegal possession separately from the homicide or murder could be susceptible of abuse since it entails undue concentration of prosecutorial powers and discretion. Prefatorily, the fact that the killing was committed with a firearm will necessarily be known to the police or prosecutorial agencies, the only probable problem being the determination and obtention of evidence to show that the firearm is unlicensed.

Now, if a separate information for homicide or murder is filed without alleging therein that the same was committed by means of an unlicensed firearm, the case would not fall under Presidential Decree No. 1866. Even if the use of a firearm is alleged therein, but without alleging the lack of a license therefor as where that fact has not yet been verified, the mere use of a firearm by itself, even if proved in that case, would not affect the accused either since it is not an aggravating or qualifying circumstance.

Conversely, if the information is only for illegal possession, with the prosecution intending to file thereafter the charge for homicide or murder but the same is inexplicably delayed or is not consolidated with the information for illegal possession, then any conviction that may result from the former would only be for simple illegal possession. If, on the other hand, the separate and subsequent prosecution for homicide or murder prospers, the objective of Presidential Decree No. 1866 cannot be achieved since the penalty imposable in that second prosecution will only be for the unlawful killing and further subject to such modifying circumstances as may be proved.

In any event, the foregoing contingencies would run counter to the proposition that the real offense committed by the accused, and for which sole offense he should be punished, is the aggravated form of illegal possession of a firearm. Further, it is the writer's position that the possible problems projected herein may be minimized or obviated if both offenses involved are charged in only one information or that the trial thereof, if separately charged, be invariably consolidated for joint decision. Conjointly, this is the course necessarily indicated since only a single composite crime is actually involved and it is palpable error to deal therewith and dispose thereof by segregated parts in piecemeal fashion. (*Italics supplied for emphases, with some footnotes in the original opinion being incorporated in the text by way of documentation.*)

With appropriate respect for the opinions en contra, I take this opportunity not only to elaborate upon and further clarify my aforequoted views in Barros but, hopefully, to also cleanse the expanding framework of our criminal law from ideas which have not grown apace with conceptual changes over time.

My position in Barros is challenged as being a novel theory which sets aside the doctrine followed in some cases previously decided by the Court and the rationale on which they were based. That is understandable, since the inertia of time has always been the obstacle to the virtues of change. That mind-set appears to predominate in the

action of the majority in the instant cases.

However, it is precisely for that reason that we are now reviewing those doctrines, as we have done in a number of cases before, instead of taking a stance of infallibility. And, if it does turn out that we are mistaken, then in law and in conscience we must act accordingly, for, as has been said, the beauty of a mistake is that it can be corrected; the tragedy is that it can be perpetuated.

I

1. It is obvious that our present problem had its origin in the aforecited case of *People vs. Tac-an* where the controversial theory was first laid down that since one offense (illegal possession of an unlicensed firearm) is penalized under a special statute while the other (murder) is punished under the Revised Penal Code, they can be validly prosecuted and punished separately. The trial court imposed the death penalty in each of said cases, the offenses having been committed in 1984 with the decision rendered therein in 1986, but this Court modified those sentences to two penalties of reclusion perpetua because of the supervenience of the 1987 Constitution. Significantly, it was explicitly accepted therein that "(a)lthough the circumstance that human life was destroyed with the use of an unlicensed firearm is not an aggravating circumstance x x x it may still be taken into account to increase the penalty to death (reclusion perpetua under the 1987 Constitution) because of the explicit provision of P.D. No. 1866."

2. That mother case of *Tac-an* gave birth to a progeny of identically-based decisions, the first being *People vs. Tioson*[3] where, in addition to the rationale that the offenses were punished under separate laws, the theory of separate penalties was further sought to be justified thus: "It does not, however, follow that the homicide or murder is absorbed in the offense; otherwise an anomalous absurdity results whereby a more serious crime defined and penalized in the Revised Penal Code is absorbed by a statutory offense, which is just a *malum prohibitum*."

3. Next came *People vs. Caling*[4] which is notable for lucidly laying down the distinction between what it categorized for easy reference as the simple and aggravated forms of illegal possession of unlicensed firearms, although it adhered to the theory of separate offenses where a killing, is involved but hewing only to the reason that this is because these offenses are punished by separate laws, as theorized in *Tac-an*. In *Caling*, however, the accused was acquitted and no application of penalties was actually made.

4. *People vs. Jumamoy*[5] sustained separate convictions for murder and the aggravated form of illegal possession of an unlicensed firearm on the same rationale as *Tioson*, with an added advertence to *People vs. Doriquez*[6] that such separate convictions will theoretically not run afoul of the prohibition against double jeopardy.

5. This was followed by *People vs. Deunida*[7] where, on two charges for murder and aggravated illegal possession of firearms, the accused was convicted only of the latter offense since the prosecution withdrew the charge for murder. The Court, in this case, considered the withdrawal of the indictment for murder as erroneous on the bases of the doctrines in *Tac-an*, *Caling* and *Tioson*.

6. In *People vs. Somooc*,[8] the accused who committed homicide with the use of an illegally possessed unlicensed firearm was charged with and convicted of the aggravated form of illegal possession and punished by reclusion perpetua since the offense was committed in 1988. The Court called attention to the doctrine and ratiocination in *Caling*.

II

It will, therefore, be observed that "the settled ruling in the aforementioned cases" is actually a skein drawn from the same single thread originally introduced by *Tac-an* and stitched into the jurisprudential fabric with some permutative designs. It is not necessarily "unfortunate if we should suddenly depart therefrom" where the benefit

of a second view and the grace of hindsight dictate such a course of action.

The Court will recall the series of cases, when the proscription against the imposition of the death penalty was still upon us, wherein we initially provided in our decisions different and inconsistent rules on the proper periods of the penalty for murder, at that time punishable by reclusion temporal in its maximum period to death. We eventually settled on reclusion perpetua as the medium period.[9] Of more recent memory was the spate of conflicting positions on the penalty for illegal possession and traffic in dangerous drugs, and the amendments brought about by Republic Act No. 7659, until we arrived at a solution in *People vs. Simon*. [10] Nobody was heard to complain that we were running afoul of the doctrine of stare decisis, as now appears to be the stance of the majority.

Indeed, if hard cases make bad law, bad law also makes hard cases, whether what is involved is statutory or case law. Of course, in discharging our duty of judicial interpretation, there may be not only merit but also facility, if not the expediency of the slothful path of least resistance, in just adopting the rule of uniformity on the bases of past decision. But, equally as commendable as the doctrine of stare decisis itself, is the well-known and ancient wisdom in the reminder that such doctrine does not mean blind adherence to precedents.

III

Obviously, because of the reasoning in *Tac-an*, the majority opinion emphasizes that in imposing a single penalty of reclusion perpetua for the qualified violation of Presidential Decree No. 1866 and treating murder merely as an element of the statutory offense, an incongruous situation results wherein a more serious crime under the Revised Penal Code, which is *malum in se*, is absorbed by a lesser offense under a special law which is only *malum prohibitum*. Hence, it was urged during the deliberations that we should not adopt a novel doctrine which rests on a shaky foundation.

1. The basic premise of this argument is definitely off-tangent. The penalty for the aggravated illegal possession of unlicensed firearm, in the terminology of *Caling*, is the single indivisible penalty of death which would be imposable regardless of the generic modifying circumstances[11] or of whether the killing constitutes murder or homicide. The penalty under Presidential Decree No. 1866 is, therefore, decidedly higher than that for murder, although it is now reclusion perpetua to death in Republic Act No. 7659, and, being thereby covered by Article 63 of the Code, will be reduced to reclusion perpetua in the absence of aggravating circumstances. Of course, it does not even have to be pointed out that the penalty for homicide is only reclusion temporal in its entire extent.

2. Even assuming *arguendo* that the penalty for the aforesaid taking of human life could be higher than the penalty for aggravated illegal possession which would absorb the former, that is not an unheard-of or earthshaking legal tableau. The objections to the doctrine of absorption here is reminiscent of what Judge Agustin P. Montesa reportedly stated, as quoted in *People vs. Hernandez, et al.*, [12] that: "The theory of absorption tenaciously adhered to by the defense to the effect that rebellion absorbs all these more serious offenses is preposterous, to say the least, considering that it is both physically and metaphysically impossible for a smaller unit or entity to absorb a bigger one."

Unfortunately, that astute observation was rejected by this Court, and advisedly so, since we are bound by legal precepts and not by physical or metaphysical laws. It is now an accepted dictum that the life of the law is not necessarily logic but experience. These considerations must have prompted the Court to also defend the doctrine of absorption in treason cases, [13] holding that more serious offenses committed for treasonous purposes are absorbed in the former, with the piquant observation in *Labra* that "(t)he factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction."

In the scheme of penalties under the Revised Penal Code, it is accepted that a lesser offense may absorb a graver

offense. As already stated, the lesser offense of rebellion which is punished by prision mayor absorbs the graver offense of murder which is now punished by reclusion perpetua to death, and all other offenses even with higher penalties if committed in furtherance of rebellion.[14] On a lower level of comparison and closer to the case at bar, the lesser offense of forcible abduction which is punished by reclusion temporal[15] absorbs the graver offense of illegal detention of a woman which is punished by reclusion perpetua to death.[16] The lower offense of slavery involving the kidnapping of a person which is punished by prision mayor[17] absorbs the higher offense of kidnapping which is punished by reclusion perpetua to death.[18]

3. Neither should the fact that the aggravated form of illegal possession of an unlicensed firearm is a *malum prohibitum* punished by a special law inveigh against the doctrine of absorption we have adopted in *Barros*. In fact, as hereinbefore quoted, *Tac-an* recognized that the killing should be taken into account to increase the penalty to death because of the explicit provision of Presidential Decree No. 1866.

In *People vs. Simon*, ante, we traced the legal history of crimes punished under special laws, from the time they were divided by a seemingly impermeable membrane, because of their American origin and formulation, from felonies under the Revised Penal Code, which are of Spanish vintage. We explained how the legal development of adopting the scheme of penalties in the Revised Penal Code and applying them to those punished by special laws, markedly starting with subversion in Republic Act No. 1700, resulted in the consequent selective applicability of some provisions of the Code to special laws, absent an express or implicit prohibition against such vicarious application. There is decidedly no insuperable obstacle now to the application of the doctrine of absorption to offenses provided for or contemplated in Presidential Decree No. 1866.

4. Nor should we hold a "judicial prejudice" from the fact that the two forms of illegal possession of firearms in Presidential Decree No. 1866 are *mala prohibita*. On this score, I believe it is time to disabuse our minds of some superannuated concepts of the difference between *mala in se* and *mala prohibita*. I find in these cases a felicitous occasion to point out this misperception thereon since even now there are instances of incorrect assumptions creeping into some of our decisions that if the crime is punished by the Revised Penal Code, it is necessarily a *malum in se* and, if provided for by a special law, it is a *malum prohibitum*.

It was from hornbook lore that we absorbed the distinctions given by text writers, claiming that: (1) *mala in se* require criminal intent on the part of the offender; in *mala prohibita*, the mere commission of the prohibited act, regardless of intent, is sufficient; and (2) *mala in se* refer to felonies in the Revised Penal Code, while *mala prohibita* are offenses punished under special laws.

The first distinction is still substantially correct, but the second is not accurate. In fact, even in the Revised Penal Code there are felonies which are actually and essentially *mala prohibita*. To illustrate, in time of war, and regardless of his intent, a person who shall have correspondence with a hostile country or territory occupied by enemy troops shall be punished therefor.[19] An accountable public officer who voluntarily fails to issue the required receipt for any sum of money officially collected by him, regardless of his intent, is liable for illegal exaction.[20] Unauthorized possession of picklocks or similar tools, regardless of the possessor's intent, is punishable as such illegal possession.[21] These are felonies under the Revised Penal Code but criminal intent is not required therein.

On the other hand, I need not mention anymore that there are now in our statutes so many offenses punished under special laws but wherein criminal intent is required as an element, and which offenses are accordingly *mala in se* although they are not felonies provided for in the Code.

IV

1. From the foregoing discussion, I regret that I cannot agree with the rationalization of the majority that two separate penalties must be imposed on the same accused because he is supposed to have committed two separate offenses of (1) illegal possession with murder, and (2) the same murder per se. The unusual justification is that in the first offense, the murder is not considered as a separate offense but only to increase the penalty for the illegal possession, and in the second offense, that same murder shall now be considered as a separate offense in itself. To make this theory palatable, the example is given that if the murder is committed with an unlicensed firearm, the death penalty is imposable, whereas if it is committed with a licensed firearm, the penalty shall only be reclusion perpetua.

This concern is evidently due to the fact that Republic Act No. 7659, which "reimposed" the death penalty for certain heinous crimes, does not include the offense that we have termed as aggravated form of illegal possession of firearms which is provided for in the second paragraph of Section 1, Presidential Decree No. 1866. It approximates, therefore, an obsessive desire to impose a higher penalty, even if thereby basic principles of criminal law and the clear provisions of Presidential Decree No. 1866 are to be disregarded. Should that intent to impose the present penalty for murder, be subserved by charging that crime separately and then prosecuting the offender again for using the firearm with which he committed the same murder? And, will that objective be achieved if the crime is homicide which has not been affected by Republic Act No. 7659 but will thereby also be subjected to the same double prosecution under the reasoning of the majority?

It has always been my position that the death penalty was not "abolished" by the 1987 Constitution, since I had some participation in formulating the provision involved. It merely provides that the same shall not "be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it,"[22] that is, authorizes its imposition. Meanwhile, all laws which provided for the death penalty remained in force and were maintained in the statute books despite that constitutional provision since it did not by itself have the effect of amending or repealing them. Some of those laws were later expressly repealed or amended by the President in the exercise of her then legislative powers and, thereafter, some were repealed or modified by Congress, which even added other heinous crimes with capital penalties. However, other laws like Presidential Decree No. 1866, which were not thus repealed or amended, retain their present provisions and effects, except that the death penalty provided by them would in the meantime be reduced to reclusion perpetua. Parenthetically, why should the laws concerned be deemed amended or repealed if the death penalty provided for therein had already been "abolished" by the Constitution?

Republic Act No. 7659 did not "reimpose" the death penalty on murder. Article 248 of the Penal Code, which provided for the penalty of reclusion temporal in its maximum period to death for that crime, was amended by Republic Act No. 7659, merely to increase the penalty to reclusion perpetua to death, but it remained in full force even during the interim except for the fact that the penalty of death could not then be imposed. That is why the title of Republic Act No. 7659 is "An act to Impose the Death Penalty in Certain Heinous Crimes, Amending for that purpose, the Revised Penal Code, x x x." The same is true with respect to the aggravated form of illegal possession of firearms, except that the imposition of the death penalty thereunder is still proscribed.

2. Even if we were to indulge the majority in its thesis on the effects of Republic Act No. 7659 on Presidential Decree No. 1866, that is, that by the non-inclusion in the former of the aggravated form of illegal possession with murder the death penalty cannot be imposed for the murder, that fact does not warrant and cannot justify the recourse it has adopted as a judicial dictum. The second paragraph of the aforesaid Section 1 expressly and unequivocally provides for such illegal possession and resultant killing as a single integrated offense which is punished as such. The majority not only created two offenses by dividing a single offense into two but, worse, it

resorted to the unprecedented and invalid act of treating the original offense as a single integrated crime and then creating another offense by using a component crime which is also an element of the former.

It would already have been a clear case of judicial legislation if the illegal possession with murder punished with a single penalty had been divided into two separate offenses of illegal possession and murder with distinct penalties. It is consequently a compounded infringement of legislative powers for this Court to now, as it has done, treat that single offense as specifically described by the law and impose reclusion perpetua therefor (since the death penalty for that offense is still proscribed), but then proceed further by plucking out therefrom the crime of murder in order to be able to impose the death sentence. For indeed, on this score, it is beyond cavil that in the aggravated form of illegal possession, the consequential murder (or homicide) is an integrated element or integral component since without the accompanying death, the crime would merely be simple illegal possession of a firearm under the first paragraph of Section 1.

3. The fact that the aggravated form of illegal possession with murder was not included in Republic Act No. 7659 is a matter for Congress, and not for this Court, to remedy. A legislative terrain with gaps of omission in the statute is not terra incognita to the courts, familiar as we are with instances thereof. The legislature may have committed such omissions in the law for reasons of its own or through unintended oversight but, unless judicial remedy is constitutionally permissible, and in the cases at bar it is not, the courts must await the legislative remedy of amendment or repeal of that law.

For illustration, we can just again refer to the impasse earlier discussed regarding the logically absurd penalties for kidnapping in Article 267, in relation to forcible abduction of a woman under Article 342 and kidnapping for slavery in Article 272, all of the Revised Penal Code. A reading of Republic Act No. 18[23] and Republic Act No. 1084[24] readily reveals that it was the purpose of Congress by corresponding amendment of the other related provisions of the Code, to put all forms of kidnapping and serious illegal detention in Article 267. Yet, in the process, that objective was not fully subserved by the two amendatory laws since forcible abduction of a woman, which necessarily involves her kidnapping and detention, as well as kidnapping for the purpose of enslaving the victim, were overlooked and not included in the provisions of Article 267.[25]

These instances are presented to project the discrepancies in what should be the appropriate penalties for the aforesaid offenses involved because of their omission by Congress in the logical taxonomy of crimes. Yet, the Judiciary stands bound by the aforementioned state of the law on the matter, and has not attempted to exercise the power reserved for legislative amendment to suit its perceptions on what the penalties should be for forcible abduction and slavery. Similarly, the disposition in the cases at bar is grounded on the omission or non-inclusion of murder through the use of an illegally possessed firearm in the heinous crimes subject of Republic Act No. 7659. But, instead of respecting the legislative formulation, the majority has contrarily decided to disregard the clear import of Presidential Decree No. 1866 and opted to impose two penalties for what it considers as two offenses through a bifurcated interpretation.

4. Following that treatment, is the Court now prepared to adopt the same procedure with regard to similar offenses punished under other decrees? For example, Presidential Decree No. 532,[26] punishes highway robbery with murder or homicide with the mandatory penalty of death. Since this offense has not been included in Republic Act No. 7659 and the death penalty cannot be imposed, shall this Court also follow the same procedure of imposing the penalty of reclusion perpetua for the highway robbery with murder (or homicide) under Presidential Decree No. 532, and then further impose the death penalty for the same murder under Article 248 of the Revised Penal Code?

Again, Presidential Decree No. 533[27] imposes the penalty of reclusion perpetua to death if a person is killed as

a result of cattle rustling. This offense has not been included in Republic Act No. 7659, hence the penalty can only be reclusion perpetua. By adopting the same rationale in the case at bar, shall the Court then impose the penalty of reclusion perpetua for cattle rustling pursuant to Presidential Decree No. 533 and then, if the killing constitutes murder attended only by an aggravating circumstance, should it then impose another penalty of death for the same murder under Article 248 of the Code?

Still further, Presidential Decree No. 534[28] provides that if illegal fishing with the use of explosives or noxious or poisonous substances results "in the loss of human life, then the penalty shall be imprisonment from 20 years to life, or death." This offense is not provided for in Republic Act No. 7659, hence the death penalty cannot be imposed; but the killing could conceivably constitute murder since the use of explosion or poison is a qualifying circumstance. The inevitable question that must again be posed, based on the theory adopted here by the majority, is whether or not the illegal fishing with murder shall be punished with life imprisonment at most under Presidential Decree No. 534, and then, if only an aggravating circumstance is present therein, the accused must also be given another penalty of death under Article 248 of the Code.

We can easily multiply what are clearly perceivable as the dangerous consequences of the solution contrived by the majority of creating two offenses and imposing two penalties. I have, however, chosen the foregoing illustrations involving acts punished under both a presidential decree and the Revised Penal Code, with murder as a common denominator, to make my analogies as close as possible to that involving Presidential Decree No. 1866 in these cases. In truth, the same problematic situation could be raised and created against any composite felony in the Code which is considered as a unitary offense and punished by a single penalty, if the majority's novel theory of duality of offenses with double penalties were to be applied thereto.

It is rather pointless to essay an unnecessary distinction between the phrase "as a result or on the occasion of" which refers to the killing committed in the course of violating Presidential Decrees Nos. 532, 533 and 534, and the killing "with the use" of an illegally possessed firearm contemplated in Presidential Decree No. 1866. Incidentally, the equivalent phrase used in the special complex crimes in Articles 294 and 297 of the Code, in referring to the deaths caused by the malefactor, is "by reason or on occasion of" the different stages of the robbery therein. But the common denominator and identity among all the aforesaid composite crimes, for purposes of the issue under consideration, is that there is a principal offense, which is separately punishable, and an unlawful killing with a direct nexus to or connection with that principal offense is also committed.

What is then the focus of the inquiry in the present case which applies with equal force to the aforestated composite crimes is merely whether or not, apart from and in addition to the penalty imposable on the offender if he violates any of the foregoing decrees or commits robbery in any of its stages and which penalty is increased precisely if accompanied by an unlawful killing, he should be further and separately punished for such homicidal or murderous taking of human life. The implacable question is whether or not two separate penalties should be imposed on him for killing the same victim since those decrees and the Code already provide a single but increased penalty for the crimes therein if accompanied by an unlawful killing and there by constituting a composite crime. Whether the death of the victim supervened as "a result or on the occasion," or "by reason or on occasion," or "with the use" of the firearm or poisonous substances availed of by the accused is immaterial even if liberally viewed in the context of the mens rea as proposed by the majority.

5. Prescinding from the substantive aspect and shifting to the procedural and constitutional view, I am also bothered by the impact of the majority opinion upon the rule on double jeopardy. I am referring, of course, to double jeopardy arising from prosecutions for the same offense under two or more laws as contemplated in the Rules of Court,[29] and not to the special situation under the Constitution[30] involving a prosecution for the same act punished under a law and an ordinance, as clarified in *People vs. Relova, etc., et al.*[31] In the first kind

of double jeopardy for purposes of this discussion, what is determinative is the identity of the offense, hence the "same evidence" test applies, that is, that the facts alleged and proven in one charge would, based on the same evidence, suffice to support the second charge, and vice-versa.[32] Accordingly, the citation by the majority of *People vs. Doriguez*[33] is of no moment, since it refers to a single act offending against two entirely distinct and unrelated provisions of law one of which requires proof of an additional fact or element, hence different and not identical offenses are involved.

In the cases now before us, it is difficult to assume that the evidence for the murder in the first charge of aggravated illegal possession of firearm with murder would be different from the evidence to be adduced in the subsequent charge for murder alone. In the second charge, the illegal possession is not in issue, except peripherally and inconsequentially since it is not an element or modifying circumstance in the second charge, hence the evidence therefor is immaterial. But, in both prosecutions, the evidence on murder is essential, in the first charge because without it the crime is only simple illegal possession, and, in the second charge, because murder is the very subject of the prosecution. Assuming that all the other requirements under Section 7, Rule 117 are present, can it be doubted that double jeopardy is necessarily present and can be validly raised to bar the second prosecution for murder?[34]

In fact, we can extrapolate this constitutional and reglementary objection to the cases of the other composite crimes for which a single penalty is imposed, such as the complex, compound and so-called special complex crimes. Verily, I cannot conceive of how a person convicted of estafa through falsification under Article 48 can be validly prosecuted anew for the same offense of either estafa or falsification; or how the accused convicted of robbery with homicide under Article 294 can be legally charged again with either of the same component crimes of robbery or homicide; or how the convict who was found guilty of rape with homicide under Article 335 can be duly haled before the court again to face charges of either the same rape or homicide. Why, then, do we now sanction a second prosecution for murder in the cases at bar since the very same offense was an indispensable component for the other composite offense of illegal possession of firearm with murder? Why would the objection of non bis in idem as a bar to a second jeopardy lie in the preceding examples and not apply to the cases now before us?

The majority comes up with the so-called "additional element" test to take the issue out of the rule on double jeopardy, citing for that purpose *Yap vs. Lutero*[35] and *People vs. Relova, etc., et al*[36] These cases are not actually in point since they are primarily concerned with the question of double jeopardy where the same offense is punished by two statutes or different sections of the same statute, as contrasted with double jeopardy arising from the same act punished by a law and likewise by an [ordinance,] as has earlier been explained. The distinction is not germane here since there is no punitive ordinance involved in the case at bar. This proposition of the majority, however, bears discussion.

I do not gainsay the validity of the "additional element test," if properly understood and correctly applied. As I have written elsewhere, it is a cardinal rule that the protection against double jeopardy may be invoked only for identical offenses or where an offense necessarily includes or is necessarily included in the other offense. However, it has also long been held that a single act may offend against two or more entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other.[37] That is because the two offenses continue to exist independently of each other, with their respective penalties remaining unaffected by the commission of or penalty for the other offense.

This is illustrated by the considerations in the present rule that Batas Pambansa Blg. 22, which punishes the mere issuance of bouncing checks, is not a bar to another prosecution for estafa through the use of bouncing checks

under paragraph 2(d), Article 315 of the Revised Penal Code.[38] The rationale therefor is that the issuance per se of a bouncing check is ipso jure punishable under Batas Pambansa Blg. 22, but to be punishable as estafa under the Code, the additional elements of deceit and damage are required. Also, while the former offense requires the drawer's knowledge of lack or insufficiency of funds in the drawee bank at the time the check is issued, the aforesaid provision on estafa does not so require. The penalty for the former is fixed by Section 1 of said law without regard to the damage caused or even without such damage, whereas the penalty for estafa through bouncing checks is determined by the damage to the offended party.[39] Lastly, Section 5 of Batas Pambansa Blg. 22 provides that prosecution thereunder "shall be without prejudice to any liability for violation of any provision of the Revised Penal Code."

These features are absent in the integrated offense of murder or homicide with the use of an illegally possessed firearm. It is true that mere illegal possession has a specific lower penalty in Presidential Decree No. 1866, and murder or homicide have their own specific penalties in Articles 248 and 249 of the Code. However, the moment both erstwhile separate offenses juridically unite, we have what for expediency has been called by this Court an aggravated form of illegal possession of firearm punishable by the two highest penalties of reclusion perpetua to death. We cannot speak here, therefore, of the "additional element test" which presupposes and requires that the two offenses remain distinct from each other, with the discrete penalty for one being immune from that for the other. What, instead, transpired in Presidential Decree No. 1866 is a unification or merger in law of both offenses of illegal possession of firearm and murder or homicide, with each of them becoming a component offense in a new and different composite crime punished by another and gravely higher penalty.

V

1. The apprehension was also aired in our deliberations that the ruling in *Barros* may provide dishonest prosecutors with unfettered discretion to charge parties who commit illegal possession of firearms in its aggravated form not with the said offense but only with homicide or murder with one qualifying circumstance, and without any generic aggravating circumstance, so that by such strategy the accused would thereby get only the minimum period of the penalty.

As long as we live in a world of men and not of angels, there will always be that legitimate fear over the possible excesses of officialdom. There are, however, a plenitude of remedies provided by law for such a contingency, either criminal, civil or administrative in nature. In fact, if that act of the public prosecutor amounts to a refusal to perform a specific duty imposed on him by law, his nonfeasance could even be controlled by an action for mandamus and he can be compelled to charge the proper offense in the information.[40]

2. Again, drawing from the experience in *Deunida* where only the aggravated illegal possession charge proceeded while that for homicide was withdrawn, then on the submission that no private interest had to be protected therein, no private prosecutor could appear for the victim. Indeed, it was stated in said case: "No private interest is therefore involved. The civil liability arising from death may be the subject of a separate civil action or impliedly instituted with the criminal action for murder or homicide." The Court then ordered the deletion of the award of civil liability ex delicto.

It is my stand that even under such circumstances, the trial court may justifiedly assess and award the corresponding damages to the heirs of the victim. This is not one of the so-called "victimless crimes" where, by the very nature of the crime, no damages can possibly be sustained by a private party, such as espionage, violation of neutrality, flight to enemy country or crimes against popular representation.[41] Where the victim was killed under the circumstances contemplated in Presidential Decree No. 1866, I see no reason why the case should be excepted from the fundamental rule that every person criminally liable is civilly liable.[42] Thus, while the crime of rebellion is directed against the Government, yet in the rebellion cases decided by this Court, corresponding

awards for civil damages were invariably granted so long as the offense which caused the damage was proved and the victim and the malefactor or the property involved were duly identified by satisfactory evidence

3. The advertence to *People vs. De Gracia, et al.*,^[43] the decision wherein was penned by this writer, overlooks or fails to mention that the same was decided under the aegis of the doctrines in the cases hereinbefore enumerated, specifically the *Tioson* case, to which we then had to defer as they constituted the prevailing rule, but which are now sought to be revisited in the instant case in light of *Barros*.

The statement in *De Gracia* that "(i)t was a legal malapropism for the lower court to interject the aforestated provision of the Revised Penal Code in this prosecution for a crime under a special law," referred to the action of the trial court in recommending executive clemency for the accused. Although there are some contrary views on the matter, the writer held that Article 5 of the Code does not apply to convictions under a special law where such application, as earlier stated, is expressly or impliedly prohibited. Said Article 5 expressly provides for the authority of the court to recommend executive clemency "when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty." Since, at that time the legal interplay between Presidential Decree No. 1866 and the penalties "borrowed" for it from the Revised Penal Code was still amorphous, this writer had to make those pronouncements in said case, but, precisely, the same are now being reexamined in the present cases.

I am aware that I have raised a number of what may appear as discomposing views but these should provoke a more thorough reexamination of the issues in these cases. On the other hand, I apprehend that the decision handed down herein may have opened a Pandora's box of legal curiosities and the swarm thus released will in due time return to the Court to roost. I can only hope that the Court's mavens of penal law who are responsible for the majority opinion here can fortify the same to meet the diverse and adverse reactions that it will predictably create.

On the foregoing premises, I respectfully but vigorously register my dissent on the points indicated and for the reasons advanced therefor

[1] G.R. Nos. 76338-39, February 26, 1990, 182 SCRA 601.

[2] G.R. Nos. 101107-08, June 27, 1995, 245 SCRA 312.

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

[4] G.R. No. 94784, May 8, 1992, 208 SCRA 821.

[5] G.R. No. 101584, April 7, 1993, 221 SCRA 333.

[6] G.R. Nos. L-24444-45, July 29, 1968, 24 SCRA 163.

[7] G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520.

[8] G.R. No. 100921, June 2, 1995, 244 SCRA 731.

[9] *People vs. Muñoz, et al.*, G.R. Nos. L-38969-70, February 9, 1989, 170 SCRA 107.

[10] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

[11] Art. 63 Revised Penal Code.

[12] 99 Phil. 515 (1956).

[13] *People vs. Prieto*, 80 Phil. 138 (1948); *People vs. Labra*, 81 Phil. 377 (1948); *People vs. Adlawan*, 83 Phil. 194 (1949).

[14] *People vs. Hernandez*, supra.

[15] Art. 342, Revised Penal Code.

[16] Art. 267, id.

[17] Art. 272, id.

[18] Art. 267, id.

[19] Art. 120, pars. 1 and 2, id.

[20] Art. 213, par. 2(b), id.

[21] Art. 304, id. This is to be distinguished from possession of instruments or implements for falsification which is punishable under Art. 176 only if the offender possesses the same "with the intention of using them."

[22] Sec. 19 (I), Art. III, Constitution.

[23] Effective September 25, 1946.

[24] Effective June 15, 1954.

[25] For that matter, even the epigraph of Article 270 still reads "kidnapping and failure to return a minor" although the original first paragraph of Article 270 on kidnapping of a minor was transposed to Article 267, and only the second paragraph of Article 270 on failure to return a minor was retained and continues to be punished therein.

[26] Anti-Piracy and Anti-Highway Robbery Law of 1974, effective August 8, 1974. Its provisions on piracy, however, have been incorporated by Sec. 3, R.A. No. 7659 in Arts. 122 and 123 of the Code, with amendments.

[27] Anti-Cattle Rustling Law of 1974, effective August 8, 1974.

[28] Defining illegal fishing with stiffer penalties, effective August 8, 1974.

[29] Sec. 7, Rule 117, in relation to Sec. 5, Rule 120.

[30] Sec. 21, Art. III.

[31] G.R. No. L-45129, March 6, 1987, 148 SCRA 292.

[32] *People vs. Diaz*, 94 Phil. 714 (1954).

[33] Supra, Fn. 6.

[34] Under the same assumption, double jeopardy can also be raised even if there has been no prior conviction for one of the offenses but both charges are pending and the accused has been arraigned in the first charge, as pointed out by this writer in his opinion in *People vs. Pineda, etc., et al.*, (L-44205, February 16, 1993, 219 SCRA 1).

[35] 105 Phil. 1307 (1959).

[36] Fn. 3 1, ante.

[37] *U.S. vs. Capurro, et al.*, 7 Phil. 24 (1906); *People vs. Bacolod*, 89 Phil. 621 (1951).

[38] *Lozano vs. Martinez, etc., et al.*, G.R. No. 63419, December 18, 1986, 146 SCRA 323, and companion cases, which upheld the constitutionality of the law as a valid exercise of police power.

[39] The commission or prosecution for either offense does not in any way affect the specific penalties imposed for each of them. It was P.D. No. 818 which was issued to increase the penalty for estafa through bouncing checks.

[40] *Bernabe vs. Bolinas, Jr., etc., et al.*, G.R. No. L-22000, November 29, 1966, 18 SCRA 812.

[41] *People vs. Orais, et al.*, 65 Phil. 744 (1938).

[42] Art. 100, Revised Penal Code.

[43] G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716.

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