

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIAM MONTINOLA, ACCUSED-APPELLANT.

G.R. Nos. 131856-57. July 09, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

The core issue in this case is whether the use of an unlicensed firearm in the killing perpetrated by reason or on the occasion of the robbery may be treated as a separate offense or as an aggravating circumstance in the crime of robbery with homicide.

Accused-appellant William Muyco Montinola (hereafter WILLIAM) was charged before the Regional Trial Court of Iloilo City with robbery with homicide in Criminal Case No. 47168 and illegal possession of firearm in Criminal Case No. 47269. The accusatory portions of the two informations read as follows:

Criminal Case No. 47168:

That on or about the 18th day of November 1996, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable court, the above named accused, armed with unlicensed Cal. 380 Pistol "Llama" with Serial No. 170257 did then and there deliberately, willfully and criminally with violence against or intimidation of persons, with intent of gain, take and carry away cash amount of P67,500.00 belonging to Jose Eduardo Reteracion, and by reason and on occasion thereof, the said accused shot to death the said Jose Eduardo Reteracion; that cash amount of P48,200.00 was recovered from the herein accused.

Contrary to Law.[1]

Criminal Case No. 47169 reads as follows:

That on or about the 18th day of November 1996, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally have in his possession, custody and control one (1) Pistol Llama, caliber .380 with Serial No. 170257 with two (2) cal. .380 live ammunition without having obtained the proper license or permit to carry, to hold and possess the same, which firearm was used by the said accused William Muyco Montinola in shooting to death the victim Jose Eduardo Reteracion.

Contrary to Law.[2]

Upon his arraignment on 6 January 1997,[3] WILLIAM entered a plea of not guilty to both charges. Joint trial of the two cases was conducted. However, on 19 February 1997, after the prosecution had presented three witnesses, WILLIAM moved to withdraw his previous plea of "not guilty"; and when rearraigned, he pleaded "guilty" to both charges. Nevertheless, trial on the merits continued.

The antecedent facts, as summarized by the Office of the Solicitor General, are as follows:

At noon of November 18, 1996, appellant boarded a passenger jeepney driven by Jesus Hibinioda bound for Libertad Plaza, Iloilo City. Among the passengers was Jose Eduardo Reteracion. All of a sudden, appellant

drew his gun, an unlicensed firearm, .380 caliber pistol Llama with Serial No. 170257 and directed Reteracion to hand over his money or else he would be killed (p. 19, TSN, January 13, 1997). Appellant aimed the firearm at the neck of Reteracion and fired successive shots at the latter. As a result Reteracion slumped dead (pp. 22-23, TSN, January 13, 1997).

Police Officer Garcia, who heard the shot, approached the jeep and met appellant carrying a gun. He chased appellant who ran away with his jacket bloodstained as he threw bundles of money. Garcia and the bystanders picked up the money strewn on the way by appellant. Police Officer Hollero finally caught up with appellant, who was brought to the police station with his gun (pp. 5-10, TSN, January 13, 1997).

The gun used by appellant while robbing and killing Reteracion was determined by Senior Police Officer Ely Superio of the PNP Firearms Unit as not licensed. Appellant had no permit to possess and/or carry the same (p. 4, TSN, February 18, 1997). The paraffin test made on the hands of appellant yielded positive for gun powder nitrate indicating that he had recently fired a gun (p. 7, TSN, February 19, 1997). The gun confiscated from appellant [was] the same gun used to shoot and kill the victim as shown by the comparison of the slugs from the tested bullets with the slugs recovered from the body of the victim (pp. 7-8 TSN, February 26, 1997).

The wife of the victim spent for the burial and wake of her husband an amount of P191,835.00 and failed to recover P39,500.00 which was a part of the money taken from her husband. She became depressed, sleepless and not in the mood to eat because of utter sadness resulting from the death of her husband (pp. 6-14, TSN, January 14, 1997).[4]

On 24 April 1996, the trial court rendered a Joint Judgment[5] finding WILLIAM guilty beyond reasonable doubt of the charges filed against him. It sentenced him to reclusion perpetua for the robbery with homicide and to the penalty of death for illegal possession of firearm. It also ordered him to pay the family of the victim the amounts of P50,000 as death indemnity; P191,835 for the burial and wake expenses; and P39,000 for the unrecovered part of the money taken from the victim and to pay the victim's wife P100,000 as moral damages.

On 19 May 1997, WILLIAM filed with the trial court a Notice of Appeal[6] stating that he was appealing the decision to the Court of Appeals. In an order dated 15 May 1997, the trial court directed the transmission of the records to this Court.

In his appellant's Brief, WILLIAM imputes this lone error to the trial court:

IT WOULD BE AN ERROR TO IMPOSE THE DEATH PENALTY FOR THE CRIME OF ILLEGAL POSSESSION OF FIREARM BECAUSE OF THE ENACTMENT OF REPUBLIC ACT NO. 8294 WHICH AMENDED PRESIDENTIAL DECREE NO. 1866.

WILLIAM contends that the use of an unlicensed firearm in the crime of murder or homicide should be appreciated as an aggravating circumstance and not as a separate offense pursuant to R.A. No. 8294,[7] specifically Section 1 thereof, amending for that purpose P.D. No. 1866.[8] The new law, R.A. No. 8294, may be retroactively applied, since it is favorable to him in that it effectively "reduced the penalties for simple and aggravated forms of illegal possession." For this reason, he prays that the Court reconsider the challenged decision of the trial court and order the dismissal of the case for illegal possession of firearm.

On the other hand, the Office of the Solicitor General (OSG) maintains that the invocation by WILLIAM of the benefits of the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. 8294, is misplaced. The use of an unlicensed firearm shall be considered as an aggravating circumstance in the crime of murder or homicide only, which are classified as crimes against persons, and not to robbery with homicide, which is classified as a crime against property under Title X of the Revised Penal Code. Furthermore, to apply to the present case the provisions of R.A. No. 8279 and treat the use of an unlicensed firearm as a special aggravating circumstance

would contravene Article 22 of the Revised Penal Code and Section 22, Article III, of the 1987 Constitution prohibiting the "ex post facto application of law." Under Article 294 of the Revised Penal Code, the crime of robbery with homicide is punishable with reclusion perpetua to death. Should the Court appreciate the use of an unlicensed firearm as an aggravating circumstance, the higher penalty of death shall be meted on the accused. Essentially, therefore, WILLIAM shall be made to suffer a greater and harsher punishment than that which the law imposed when the act was committed. Upon the other hand, there is no legal obstacle on the conviction of WILLIAM of the separate crimes of robbery with homicide and illegal possession of firearm because such is supported by our ruling in *People v. Cerveto*.^[9]

The OSG then sought for the affirmance of the trial court's ruling adjudging the accused guilty of two separate crimes of robbery with homicide and illegal possession of firearm. It recommends, however, that in the charge of illegal possession of firearm the accused be given the benefit of the lighter penalty provided in R.A. No. 8294, i.e., a penalty ranging from four years (4) and two (2) months, as minimum, to six (6) years, as maximum, of prision correccional. Furthermore, the accused should be ordered to return the amount of P19,300 representing the "difference between the amount taken away and the amount recovered as alleged in the information."

A few words on procedure and jurisdiction.

WILLIAM's notice of appeal has not escaped our attention. He therein stated that he was appealing the trial court's judgment to the Court of Appeals. It must be noted that it is the Supreme Court, and not the Court of Appeals, that has appellate jurisdiction over all criminal cases in which the penalty imposed is reclusion perpetua or higher.^[10] As to judgments in which death penalty is imposed, such as the judgment in Criminal Case No. 47169, no notice of appeal is necessary, as the same is subject to automatic review^[11] pursuant to Article 47 of the Revised Penal Code, as amended by R.A. No. 7659. But as to judgments imposing reclusion perpetua, such as that in Criminal Case No. 47168, the appeal to this Court shall be by filing a notice of appeal with the trial court.^[12]

WILLIAM's notice of appeal from the judgment in Criminal Cases Nos. 47168-69, albeit erroneous since it was directed to the Court of Appeals, may nevertheless be given due course. For even without that or even if he did not appeal from said judgment, we would nevertheless review the same conformably with our ruling in *People vs. Alitagtag*,^[13] as affirmed in *People vs. Contreras*.^[14] We ruled therein that where cases have been consolidated and jointly tried, and only one decision is rendered sentencing the accused to death in one and to reclusion perpetua in the others, he would be deemed to have appealed from the judgment in the latter cases.

Now on the merits of the case.

We find that the prosecution has duly established by evidence independent from WILLIAM's plea of guilty and confession of guilt that he killed the victim after having succeeded in divesting the latter of his money. The gun he used in shooting the victim, which was thereafter seized from him and offered in evidence, was unlicensed. And per the testimony of SPO3 Ely Superio of the PNP Firearms and Explosive Unit, WILLIAM had no license or permit to possess or carry the same.

The lone issue thus obtaining in this case is whether in light of the amendment introduced by R.A. No. 8294 to P.D. No. 1866 he could be prosecuted for, and convicted of, the separate crimes of robbery with homicide and illegal possession of firearms.

On 18 November 1996, when the crime was committed, the pertinent law, P.D. No. 1866, provided in Section 1 thereof as follows:

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

Instruments 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 a firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearms or ammunition.

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

In *People v. Alolod*,^[15] the accused therein grabbed from a passenger of a jeepney a bag containing money. When the latter resisted and grappled for the possession of the bag, accused shot him twice with a .38 caliber paltik revolver. In our decision of 7 January 1997, we affirmed the trial court's judgment convicting the accused-appellant therein of two separate crimes of robbery with homicide and illegal possession of firearm and sentencing him to the penalty of reclusion perpetua in each case. As to the charge of illegal possession of firearm, we held:

Sec. 1 of P.D. [No.] 1866 provides that "[i]f homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed." Since the incident took place on 13 December 1991 when the death penalty was proscribed and before it was reimposed under R.A. [No.] 7659, which took effect [on] 31 December 1993, the sentence is automatically commuted to reclusion perpetua.

The present case has similar set of facts; the only difference is that the crimes were committed on 18 November 1996 when R.A. No. 7659 restoring the death penalty was already in effect. Thus, in line with the ruling in *Alolod* and applying P.D. No. 1866 and R.A. No. 7659, WILLIAM could be held guilty of two separate crimes of robbery with homicide and illegal possession of firearm, and sentenced to reclusion perpetua for the first crime and to death for the second.

Fortunately for WILLIAM, on 6 July 1997 while his case was still pending, R.A. No. 8294 amending P.D. No. 1866 took effect. The third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, provides:

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

In recent cases,^[16] we ruled that there could be no separate conviction for illegal possession of firearm if homicide or murder is committed with the use of an unlicensed firearm; instead, such use shall be considered merely as an aggravating circumstance in the homicide or murder committed. Hence, insofar as the new law will be advantageous to WILLIAM as it will spare him from a separate conviction for illegal possession of firearm, it shall be given retroactive effect.^[17]

We cannot apply to the instant case *People v. Cervito*,^[18] which is relied upon by the OSG. Unlike in the instant case, that case did not call for the application of the second paragraph of Section 1 of P.D. No. 1866 or the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, since the unlicensed firearm which was recovered from the scene of the crime was not the one used in the homicide committed on the occasion of the robbery. The prosecution evidence itself disclosed that such gun had not been fired, as it had no spent shells. The accused-appellant therein, Freneto Cervito, was, however, seen pointing that gun at the passengers while the robbery was going on. He was thus convicted of two crimes of robbery with homicide and illegal possession of firearm. We affirmed his conviction for both crimes. Although the crimes were committed on 10 July 1995 before the effectivity of R.A. No. 8294, we applied the said law with respect to the penalty for the crime of illegal possession of firearm for being more favorable to the accused in that it provided a lighter penalty.

The next question that needs to be addressed is whether the use of an unlicensed firearm in the killing perpetrated by reason or on the occasion of the robbery may be considered as an aggravating circumstance in the crime of

robbery with homicide.

It is undisputed that, pursuant to the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, such use of an unlicensed firearm is a special aggravating circumstance in the homicide or murder committed. But, may the aggravating circumstances attending the killing be appreciated in fixing the appropriate penalty for robbery with homicide? The rulings on this matter are conflicting.

In *People v. Galang*[19] and *People v. Semañada*,[20] treachery and cruelty, which attended the killing, were considered as aggravating circumstances in determining the penalty for robbery with homicide. In *People v. Nismal*,[21] the circumstance of disregard of respect due the victim on account of his rank aggravated the crime of robbery with homicide.

Likewise, in *People v. Capillas*,[22] *People v. Ang*,[23] and *People v. Punzalan*,[24] we held that when the killing is committed by reason or on the occasion of the robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances; thus, in all these three cases the circumstance of abuse of superior strength[25] served to aggravate the crime. In the third case, evident premeditation was also considered as aggravating. However, in these three cases, as well as in *People v. Ponciano*,[26] we said that disregard of age, sex or rank is not aggravating in robbery with homicide, which is primarily a crime against property, as the homicide is regarded as merely incidental to the robbery.

It is worthy to note, however, that in the more recent case of *People v. Salvatiera*,[27] reiterated in *People v. Cando*[28] and *People v. Macabales*,[29] we held that when treachery obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance, since robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. Having formed part of the circumstances proven concerning the actual commission of the crime, such treachery would help determine the penalty to be imposed.

Furthermore, it may not be amiss to state that the special aggravating circumstance of use of an unlicensed firearm mentioned in Article 296[30] of the Revised Penal Code has been held to be applicable only to cases of robbery in band under Article 295 of the same Code. It was not appreciated in fixing the penalty for robbery with homicide under Article 294 even if committed by a band with the use of unlicensed firearms (the element of band was considered merely as an ordinary aggravating circumstance).[31]

At any rate, even assuming that the aggravating circumstances present in the commission of homicide or murder may be counted in the determination of the penalty for robbery with homicide, we cannot appreciate in this case the special aggravating circumstance of "use of an unlicensed firearm" mentioned in the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294. Such law was not yet enacted when the crime was committed by WILLIAM; it cannot, therefore, be given retroactive effect for being unfavorable to him.

Under Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, robbery with homicide is punishable by reclusion perpetua to death, which are both indivisible penalties. Article 63 of the same Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. If we would apply retroactively the special aggravating circumstance of use of unlicensed firearm under Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, the impossible penalty would be death. Conformably with our ruling in *People v. Valdez*,[32] reiterated in *People v. Macoy*,[33] insofar as the new law would aggravate the crime of robbery with homicide and increase the penalty from reclusion perpetua to death, it would not be given retroactive application, lest it would acquire the character of an ex post facto law. Hence, we shall not appreciate that special aggravating circumstance. There being no modifying circumstances, the lesser penalty[34] of reclusion perpetua shall be

imposed upon accused-appellant WILLIAM.

Parenthetically, the trial court was correct in not crediting in favor of WILLIAM the mitigating circumstance of plea of guilty, since the change of his plea from "not guilty" to "guilty" was made only after the presentation of some evidence for the prosecution.[35] To be entitled to such mitigating circumstance, the accused must have voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.[36] The following requirements must therefore concur: (1) the accused spontaneously confessed his guilt; (2) the confession of guilt was made in open court, that is, before a competent court trying the case; and (3) the confession of guilt was made prior to the presentation of evidence for the prosecution.[37] The third requisite is wanting in the present case.

We shall modify the awards of damages. The award of P191,835 for burial and wake expenses should be reduced to P117,672.26, since only the latter amount was evidenced by receipts. Likewise, considering the allegation in the information and the testimony[38] of the victim's wife that the amount of P48,200 was recovered from WILLIAM, the award of P39,000 representing the unrecovered part of the money taken from the victim must also be reduced to P19,300 (the difference between the sum of money taken from the victim [P67,500] and that recovered from accused-appellant [P48,200]). We should also reduce the award of moral damages from P100,000 to P50,000 in accordance with current jurisprudence.[39]

WHEREFORE, the Joint Judgment of the Regional Trial Court of Iloilo City, Branch 25, in Criminal Cases Nos. 47168 and 47269 is AFFIRMED with MODIFICATIONS as follows:

- In Criminal Case No. 47169, accused-appellant WILLIAM MONTINOLA is ACQUITTED of the crime of illegal possession of firearm and therefore spared the penalty of death;

- In Criminal Case No. 47168, where the penalty of reclusion perpetua is imposed,

(a)

The award of P191,835 for burial and wake expenses is REDUCED to P117,672.26;

(b)

The award of P39,000 representing the unrecovered part of the money taken from the victim is REDUCED to P19,300; and

(c)

The award for moral damages is REDUCED from P100,000 to P50,000.

Costs de oficio.

SO ORDERED.

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Pardo, Buena, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Panganiban, Quisumbing, and Ynares-Santiago, JJ., on official business abroad.

Gonzaga-Reyes, J., on leave.

[1] Original Record (OR), Criminal Case No. 47168, 1-2; Rollo, 7-8.

[2] OR, Criminal Case No. 47169, 1; Rollo, 9.

[3] TSN, 19 February 1997, 2-3.

[4] Appellee's Brief, 4-6; Rollo, 83-85.

[5] Per Judge Bartolome M. Fanuñal. Rollo, 59.

[6] OR, (unpaginated) page before 108.

[7] Entitled "An Act Amending the Provisions of Presidential Decree No. 1866, as Amended, Entitled 'Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes.' "

[8] Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes."

[9] 315 SCRA 611 [1999].

[10] Article VIII, Section 5(2)(d), Constitution.

[11] See also Section 3(e), Rule 122 of the 1985 Rules of Criminal Procedure, now Section 3(d), Rule 122, Revised Rules of Criminal Procedure, as amended.

[12] Section 3(c), in relation to Section 3(a), Id.

[13] 309 SCRA 325 [1999].

[14] G.R. Nos. 137123-34; 23 August 2000.

[15] 266 SCRA 154 [1997].

[16] People v. Molina, 292 SCRA 742, 781-782 [1998]; People v. Feloteo, 295 SCRA 607, 618 [1998]; and People v. Narvasa, 298 SCRA 637, 654 [1998].

[17] Article 22, Revised Penal Code; People v. Valdez, 304 SCRA 611, 630 [1999].

[18] Supra note 9.

[19] 73 Phil. 184 [1941].

[20] 103 Phil. 790 [1958].

[21] 114 SCRA 487 [1982].

[22] 108 SCRA 173 [1981].

[23] 139 SCRA 115 [1985].

[24] 203 SCRA 364 [1991].

[25] See also *People v. Verdad*, 122 SCRA 239, 244-245 [1983].

[26] 204 SCRA 627 [1991].

[27] 257 SCRA 489, 507 [1996].

[28] G.R. No. 128114, 25 October 2000.

[29] G.R. No. 111102, 8 December 2000.

[30] ART. 296. Definition of a band and penalty incurred by the members thereof. -- When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearms.

[31] *People v. Apduhan*, 24 SCRA 798, 808-809 [1968]; *People v. Cruz*, 133 SCRA 426, 435 [1984].

[32] *Supra* note 17.

[33] G.R. No. 138674, 22 June 2000.

[34] Article 63, second paragraph, no. 2, Revised Penal Code.

[35] *People v. Kayanan*, 83 SCRA 437, 450-451 [1978]; *People v. Lungbos*, 162 SCRA 383, 388-389 [1988]; *People v. Verano* 163 SCRA 614, 621 [1988].

[36] Article 13 (7), Revised Penal Code.

[37] *People v. Crisostomo*, 160 SCRA 47, 56 [1988]; *People v. Bueza*, 188 SCRA 683, 689-690 [1990].

[38] TSN, 14 January 1997, 7.

[39] *People v. Aquino*, 322 SCRA 769, 778 [2000]; *People v. Baltar*, G.R. No. 125306, 11 December 2000; *People v. Galo*, G.R. No. 132025, 16 January 2001.

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