

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMUEL MAMOGAY Y MABA ALIAS “MANUEL”;
ACCUSED-APPELLANT.**

G.R. Nos. 55418-19. June 29, 1982

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On November 3, 1977, in Abuyog, Leyte, Samuel Mamogay shot and killed Lucrecio Garzola with a home-made firearm known as "Latong." Thereafter, he was charged in the Court of First Instance of Leyte of the following crimes:

In Criminal Case No. 3552 of murder committed according to the information as follows:

"That on or about the 3rd day of November, 1977, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, shot and wound one LUCRECIO GARZOLA with the use of an illegally possessed homemade firearm known as 'Latong' which said accused had purposely provided himself, thereby causing and inflicting upon the said Lucrecio Garzola multiple fatal wounds in the different part of his body which caused his death shortly thereafter."

And in Criminal Case No. 3553 of violation of P.D. No. 9 (illegal possession of firearm) as follows:

"That on or about the 3rd day of November, 1977, in the Municipality of Abuyog, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one unlicensed homemade firearm locally known as 'Latong' without permit and/or license from the Government."

Both cases were tried jointly by the court a quo. On December 3, 1979, the accused, assisted by counsel de oficio, pleaded guilty to both charges. Nonetheless, the judge prudently and wisely required the prosecution to present its evidence. Despite several postponements the prosecution was unable to do so because its witnesses could not be contacted. As a last resort the accused, assisted by his counsel, took the witness stand and explained the reasons why he shot and killed Garzola. He also admitted that his written confession before the police was voluntary after he had surrendered.

The court a quo gave the accused the benefit of two mitigating circumstances for both crimes, namely: voluntary surrender and plea of guilty.

In Criminal Case No. 3552 for murder, he was sentenced to an "indeterminate penalty of Ten (10) Years and One (1) Day of prision mayor, maximum, to Seventeen (17) Years and Four (4) months of reclusion temporal, medium, and to indemnify the heirs of Lucrecio Garzola the sum of P12,000.00 without any subsidiary imprisonment in case of insolvency and to suffer all the accessory penalties provided by law."

In Criminal Case No. 3553 for illegal possession of firearms, he was sentenced "to the mandatory penalty of death."

No appeal has been interposed in Criminal Case No. 3552 for murder; this decision is limited to Criminal Case No. 3553 which is before Us on automatic review because of the death penalty imposed by the trial court.

Both Atty. Ancheta R. Tan, counsel de oficio of the appellant, and the Solicitor General are one in stating that the trial court erred in imposing the death penalty in the firearm case. We agree.

In sentencing the appellant to die, the trial court relied on the provisions of Sec. I(a) of P.D. No. 9 which reads as follows:

" 1. Any violation of the aforesaid General Orders Nos. 6 and 7 is unlawful and the violator shall, upon conviction suffer:

a) The mandatory penalty of death by a firing squad or electrocution as a military court/tribunal/commission may direct, if the firearm involved in the violation is unlicensed and is attended

by assault upon, or resistance to persons in authority or their agents in the performance of their official functions resulting in death to said persons in authority or their agent; or if such unlicensed firearm is used in the commission of crimes against persons, property or chastity causing the death of the victim, or used in violation of any other General Orders and/or Letters of Instructions promulgated under said Proclamation No. 1081."

The reliance was misplaced because the information in Criminal Case No. 3553 to which the appellant had pleaded guilty and on the basis of which he was sentenced to death, does not allege murder with the use of the illegally possessed firearm—a circumstance necessary to qualify the offense to make it fall under Sec. I(a) of P.D. No. 9. It must also be mentioned that the crime committed by the appellant was an impulsive and isolated act of violence with no overtone of subversion, rebellion, insurrection, etc. which P.D. No. 9 contemplates. (See *People vs. Purisima*, No. L-42050-66, Nov. 20, 1978, 86 SCRA 542.)

The foregoing notwithstanding, the appellant is still liable for illegal possession of firearm penalized by Sec. 2692 of the Revised Administrative Code as amended by R.A. No. 4.

WHEREFORE, the judgment under review is hereby modified and as recommended by the Solicitor General the appellant is hereby sentenced to an indeterminate penalty of imprisonment from Three (3) Years and One (1) Day, as minimum, to Five (5) Years, as maximum, and a fine of P3,000.00; and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Conception Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vusquez, Relova and Gutierrez, JJ., concur.

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