

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENEROSO BITUIN, ACCUSED-APPELLANT.

G.R. Nos. 55485-86. June 29, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This case is exactly similar to the case of *People vs. Mamogay* (G.R. Nos. 55418-19). In both cases the accused were charged with murder and violation of P.D. No. 9 (illegal possession of firearm) before the Court of First Instance of Leyte; in both cases the two charges were tried jointly; in both cases the accused pleaded guilty to the charges; in both cases the accused was meted separate sentences corresponding to the charges; and in both cases the penalty of death was imposed in respect of the illegal possession of firearm.

On September 8, 1976, in Jaro, Leyte, Generoso Bituin shot and killed Victoriano Pore with a home-made shotgun locally called "Surit-surit." Thereafter he was charged in the Court of First Instance of Leyte of the following crimes:

In Criminal Case No. 3652 of murder committed according to the information as follows:

"That on or about the 8th day of September, 1976, in the Municipality of Jaro, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously assault, shot and wound VICTORIANO PORE with the use of an unlicensed homemade shotgun, locally called 'Surit-surit,' which the accused had provided himself for the purpose, thereby hitting and inflicting upon the victim a mortal wound as a consequence of which the latter died thereafter."

And in Criminal Case No. 3653 of violation of P.D. No. 9 (illegal possession of firearm) as follows:

"That on or about the 8th day of September, 1976, in the Municipality of Jaro, Province of Leyte, Philippines, within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control, outside his residence, a firearm, locally known as 'Surit-surit', without any permit or authority from any government authority and the same not being a necessary tool or implement in the pursuit of his livelihood nor was he then engaged and using it in connection therewith."

Because the two charges were intimately related, they were tried jointly. On February 21, 1980, the accused, assisted by counsel de oficio, voluntarily entered a plea of guilty to both informations. Nonetheless, the trial judge prudently and wisely directed the prosecution to present its evidence "considering the mandatory penalty of death imposed by Presidential Decree No. 9, when an illegally possessed firearm is used in the commission of the crime which results in the death of the victim." As in the *Mamogay* case, the prosecution was unable to present its witnesses despite several postponements so that, as a last resort, the accused took the witness stand assisted by his counsel.

On the witness stand, the accused admitted having killed Victoriano Pore because Pore had killed a brother of the

accused named Benjamin Bituin; and that he used a home-made shotgun which he had found in killing Pore.

The trial court found that the crime committed by the accused was not murder but homicide only "in the absence of any evidence showing premeditation and treachery." It gave him the benefit of two mitigating circumstances, namely: voluntary surrender and plea of guilty. The court then rendered the following judgment:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of homicide punishable under the provisions of Art. 249 of the Revised Penal Code is hereby sentenced to suffer an indeterminate penalty of SEVENTEEN(17) YEARS, FOUR(4) MONTHS and ONE(1) DAY to TWENTY(20) YEARS maximum of reclusion temporal. For the crime of illegal possession of firearm punishable under Sec. 1(a) of Presidential Decree No. 9, the accused is hereby condemned to the mandatory penalty of death."

No appeal has been interposed in Criminal Case No. 3652 where the accused was convicted of homicide instead of murder. Hence, this decision is limited to Criminal Case No. 3653 which is before Us on automatic review because of the death penalty imposed by the trial court.

Considering the plea of guilty and the testimony of the accused with the assistance of counsel in both cases, We are convinced that the appellant is guilty of illegal possession of firearm. The only question is the appropriateness of the death penalty imposed by the trial court. As in the Mamogay case, the Solicitor General disagrees with the trial court in convicting the appellant of the offense of illegal possession of firearm in violation of P.D. No. 9, Sec. 1(a) and imposing upon him the penalty of death.

We agree with the Solicitor General. As We stated in the Mamogay case:

"In sentencing the appellant to die, the trial court relied on the provisions of Sec. 1(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 the 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. 1(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*, Nos. 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, Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, JJ., concur.

Concepcion Jr., J., is on leave.

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