

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO MORATO ALIAS “BOYANG” AND EMMANUEL
CACATIAN ALIAS “BOY”, ACCUSED, ERNESTO MORATO
ALIAS “BOYANG”, APPELLANT.**

G.R. Nos. 95358-59. July 05, 1993

Ponente: MELO, J.

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MELO, J.:

Ernesto Morato and Emmanuel Cacatian were charged with the crime of murder in an Information dated February 8, 1989, which pertinently reads:

That on or about the 8th day of February, 1989, at Franco's Chicken House, Rizal Avenue, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping one another, with treachery and evident premeditation with intent to kill and while armed with unlicensed firearm, did then and there wilfully, unlawfully and feloniously assault, attack and shot therewith one Pat. Jose Ponce de Leon on the different parts of his body, which was the direct and immediate cause of his death. (p. 5, Rollo.)

In a separate Information also dated February 8, 1989, Ernesto Morato was charged for illegal possession of firearms, thusly:

That on or about the 8th day of February, 1989, at Rizal Avenue, City of Puerto Princesa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) short firearm, without first securing the necessary permit and/or license from the proper authorities to possess the same, and which said firearm was used in the commission of murder against PAT. JOSE PONCE DE LEON.

CONTRARY TO LAW, in Violation of Presidential Decree No. 1866. (p. 6, Rollo.)

Upon arraignment, both accused pleaded not guilty, but after the prosecution had rested its case, accused Emmanuel Cacatian filed a demurrer to evidence which the trial court granted, thus dismissing the case against him. The trial proceeded insofar as accused Ernesto Morato was concerned.

On June 21, 1990, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of Murder as principal as the same is defined and penalized under the Revised Penal Code. Likewise, he is also found guilty beyond reasonable doubt as principal of the crime of Illegal Possession of Firearms sentencing the accused in both cases to suffer two (2) penalties of reclusion perpetua as well as to pay the cost.

He is also ordered to indemnify the heirs of the victim the sum of Thirty Thousand (P30,000.00) Pesos as and for the death of the deceased; the sum of Fifty Nine Thousand (P59,000.00) Pesos as and for actual damages

incurred by reason of the death of the victim, as well as the sum of Fifty Thousand (P50,000.00) Pesos as and for moral damages. (pp. 37-37a, Rollo.)

Accused Morato has interposed the instant appeal upon the following assignment of errors:

I

THE TRIAL COURT ERRED IN PROCEEDING WITH THE CHARGE FOR ILLEGAL POSSESSION OF FIREARM, THE LAW PENALIZING THE SAME BEING UNCONSTITUTIONAL.

II

THE TRIAL COURT ERRED IN CONVICTING ACCUSED TWICE FOR THE SAME OFFENSE.

III

THE TRIAL COURT ERRED IN ASSUMING THAT TREACHERY QUALIFIED THE KILLING AS MURDER.

IV

THE TRIAL COURT ERRED IN ASSUMING THAT ACCUSED WAS CARRYING A FIREARM.

V

THE TRIAL COURT ERRED IN NOT APPRECIATING THE CIRCUMSTANCES FAVORABLE TO ACCUSED.

The facts of the case as borne out by the evidence are as follows:

At around 9 P.M. of February 7, 1989, Andrew de los Santos and Gabby Burgos arrived at Franco's Chicken House located at Rizal Avenue, Puerto Princesa City. Upon entering the establishment, Andrew saw Pat. Jose Ponce de Leon sitting on a stool at the bar counter. Andrew sat on the stool to the left of Pat. de Leon while Gabby took the stool to the right of Pat. de Leon.

At around midnight, accused-appellant and Emmanuel Cacatian arrived, proceeded to the bar, and ordered beer. Cacatian sat on the stool second to the right of Pat. De Leon, while accused-appellant, upon getting his bottle of beer joined another group. Later, Andrew noticed that Pat. de Leon and Cacatian were arguing. Walfrido Ponce de Leon, the owner of the establishment, was immediately summoned by his wife and he tried to pacify Pat. de Leon and Cacatian. Andrew approached Cacatian and asked him what the problem was but Walfrido de Leon answered that everything was all right and led Andrew aside. Suddenly, Walfrido heard the roar of a gunshot. He looked at the direction where the shot came from and saw accused-appellant holding a gun and shooting Pat. de Leon twice until the latter fell. Forthwith, accused-appellant fled.

Walfrido, Popoy Lanzas, and Jimmy Manalang brought Pat. de Leon to a hospital where he was pronounced dead on arrival. Dr. Rudolph Bala later performed an autopsy on the body of Pat. de Leon and thence submitted his post mortem report indicating that Pat. de Leon suffered the following:

1. Gunshot wound, about 1.5 cm in diameter, located over the left lateral side of the chest wall, about 2 inches below the left axilla.
2. Gunshot wound, about 1.5 cm in diameter, located over the right lateral aspect of the anterior chest wall, about 1 1/2 inches lateral to the right nipple.

3. Gunshot wound about 1.5 cm located over the right middle arm, lateral aspect. (p. 54, Rollo.)

The cause of death was shock, secondary to internal hemorrhage, due to multiple gunshot wounds.

Accused-appellant contends that Presidential Decree No. 1866 under which he was charged with the crime of illegal possession of firearm is unconstitutional because it is allegedly vague and, therefore, violates the due process and equal protection clauses of the Constitution. The supposed vagueness arises from the fact that the law does not allegedly specifically define what constitutes the crime of illegal possession of firearms. Upon a perusal of Presidential Decree No. 1866, we find no vagueness in the wording of said law.

The first two paragraphs of Section 1 of the decree, which read 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.

are specific enough.

It is to be noted that Presidential Decree No. 1866, among other things, is a codification of various laws on illegal possession of firearms. Section 9 thereof, the repealing clause, does not repeal General Order No. 6 which provides that "no person shall keep, possess or carry outside of his residence any firearm unless such person is duly authorized to keep, possess or carry any such firearm..." Neither does the decree repeal General Order No. 7 which declares that:

1. Only officers and men of the Armed Forces of the Philippines and police officers in the actual performance of official mission or duty shall be allowed to carry firearms outside residence;
2. Guards of private security agencies and public or private corporations or firms are authorized to carry their duly licensed firearms only from the premises or the offices of such agencies, corporations or firms to their place of work and return ...

It is plain from a reading of said decree and general orders that the crime of illegal possession of firearms is committed by a person who has in his possession a firearm without a license or permit to do so from the proper authorities, or by a person, although authorized to possess such firearm, nevertheless carries it outside of his residence without permit to do so from the proper authorities. The pertinent laws on illegal possession of firearms are clear and unambiguous. Said laws, not being contrary to any provision of the Constitution, are constitutional.

Accused-appellant, while admitting killing Pat. Jose Ponce de Leon, interposes self-defense and defense of a stranger to obtain acquittal.

It is elementary that where an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden of proof of establishing his plea of self-defense by credible, clear, and convincing evidence (*People vs. Tingson*, 47 SCRA 243 [1972]; *People vs. Llamera*, 51 SCRA 48 [1973]; *People vs. Ardisa*, 55 SCRA 245 [1974]), otherwise conviction would follow from his admission that he killed the victim (*People vs. Dorico*, 54 SCRA 172 [1973]; *People vs. Boholst-Caballero*, 61 SCRA 180 [1974]). To prove self-defense, the accused must establish three concurring requisites, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression; and (c) lack of sufficient provocation on the

part of the accused (Article 11, No. 1, Revised Penal Code; *People vs. Ordiales*, 42 SCRA 238 [1971]; *People vs. Encomienda*, 46 SCRA 522 [1972]; *People vs. Aquino*, 54 SCRA 409 [1973]).

The initial and crucial point of inquiry is whether there was unlawful aggression on the part of the victim for absent this essential element, no self-defense can be successfully interposed. If there is no unlawful aggression, there is nothing to prevent or to repel and the second requisite of self-defense will have no basis (*Ortega vs. Sandiganbayan*, 170 SCRA 38 [1989]).

Accused-appellant claims that "he shot the victim with a gun grabbed from the waist of Andrew de Los Santos, because the victim was pointing his own gun at Boy Cacatian and appellant" and that "appellant had to fire more than once because the victim was still pointing his gun at appellant". (p. 10, Appellant's Brief, ff. p. 49, Rollo.)

The evidence disproves this stance. In the first place, the number and location of the wounds sustained by the victim negate the claim of self-defense. The victim suffered three gunshot wounds. Two of the wounds were inflicted at the left and right lateral sides of the chest wall of the victim and were fatal wounds. When the victim was first hit in the arm (p. 10, Tsn., October 18, 1989), he was disabled and his normal movements were impaired. There was no further need for accused-appellant to fire two more shots at the victim. This circumstance clearly indicates that accused-appellant did not merely intend to disable the victim but was unwavering in his determination to kill the victim (*People vs. Martija*, 112 SCRA 528 [1982]). In the second place, accused-appellant's position in relation to the victim belies his defense. Both witnesses Walfrido Ponce de Leon and Andrew de los Santos testified that accused-appellant was behind the victim when the latter was shot. With the victim's back turned against accused-appellant, it was impossible for the victim to have aimed his gun at the former. The victim could not have initiated any aggression against accused-appellant. Thirdly, accused-appellant's assertion that he grabbed the gun, with which he shot the victim, from the waist of Andrew de los Santos runs counter to the testimony of Andrew that he was not carrying any firearm at the time of the incident, which testimony is corroborated by the certification issued by the Iwahig Prison and Penal Farm that Andrew de Los Santos was not on duty at the time and that all firearms issued to him as a prison guard were duly accounted for and his accountability did not involve any .38 caliber handgun. It is to be noted that the victim was killed by a .38 caliber gun. Brandeis Flores, an NBI ballistics expert who conducted a ballistics examination of the slug extracted from the body of the victim, testified that the slug was fired from a .38 caliber firearm. Furthermore, accused-appellant testified that when the victim fell his (victim's) gun fell on the floor and that when accused-appellant left the scene he left Andrew's gun at the scene of the shooting. However, the police did not find any gun at the scene of the shooting. We, therefore, find that accused-appellant failed to establish unlawful aggression on the part of the victim.

The foregoing discussion likewise disposes of the alternative defense that accused-appellant acted in defense of stranger for the reason that the first requisite of defense of a stranger, as in self-defense, is that there was unlawful aggression on the part of the victim (Article 11, No. 2, Revised Penal Code).

The evidence patently shows that accused-appellant is guilty of murder as the shooting of the victim was effected treacherously. There is treachery when the attack is deliberate, sudden, unexpected and from behind (*People vs. Palencia*, 71 SCRA 679 [1976]; *People vs. Cabaling*, 74 SCRA 285 [1976]; *People vs. Pascual*, 81 SCRA 548 [1978]; *People vs. Candado*, 84 SCRA 508 [1978]; *People vs. Alegria*, 84 SCRA 614 [1978]; *People vs. Ruiz*, 93 SCRA 739 [1979]). In the case at bar, it has been established that accused-appellant shot Pat. Jose Ponce de Leon suddenly and unexpectedly from behind.

It has likewise been established that accused-appellant is guilty of illegal possession of firearms as he had in his possession a .38 caliber handgun for which he had no permit to carry. The Firearms and Explosives Section of the

Philippine Constabulary issued a certification that accused-appellant was not a duly registered licensee/firearm holder of any caliber.

Accused-appellant assails the conclusion of the trial court that he did not voluntarily surrender. We agree with accused-appellant on this point. The evidence shows that on the day following the killing, accused-appellant surrendered to the Provincial Commander. That the Provincial Commander announced over the radio that he would issue a "shoot to kill" order unless accused-appellant voluntarily surrenders, and that accused-appellant was persuaded to surrender by his employer do not militate against the consideration of his voluntary surrender as a mitigating circumstance. The stubborn fact remains that he was not arrested and that he presented himself to the Provincial Commander to surrender.

Accused-appellant contends that he was placed in double jeopardy when he was charged with two offenses, murder and illegal possession of firearms, arising from the same act, in two separate informations, and convicted therefor. This contention has already been disposed of in the case of *People vs. Tac-an* (182 SCRA 601 [1990]), where this Court ruled as follows:

It is also contended by appellant that because he had already been charged with illegal possession of a firearm and ammunition in Criminal Case No. 4007, aggravated by the use of such unlicensed firearm to commit a homicide or murder, he was unconstitutionally placed in jeopardy of punishment for the second time when he was charged in Criminal Case No. 4012 with murder "with the use of an unlicensed [firearm]," in violation of Article 248 of the Revised Penal Code in relation to Section 17 of B.P. Blg. 179.

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. (at pp. 615-616.)

In the computation of the penalty for the crime of murder, the mitigating circumstance of voluntary surrender should be considered. Under Article 248 of the Revised Penal Code, the penalty prescribed for murder is reclusion temporal in its maximum period to death. There being one mitigating circumstance, the penalty should be reclusion temporal in its maximum period or 17 years, 4 months and 1 day to 20 years. Applying the Indeterminate Sentence Law in relation to Paragraph 3, Article 61, of the Revised Penal Code, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum of the penalty immediately following in the scale of penalties. The penalty next lower in degree, therefore, ranges from the maximum of prision mayor to the medium of reclusion temporal, or 10 years and 1 day to 17 years and 4 months.

WHEREFORE, the decision appealed from is hereby modified as follows:

- 1) Accused-appellant is found guilty of illegal possession of firearm under Paragraph 2, Section 1 of Presidential Decree No. 1866 and is sentenced to reclusion perpetua;
- 2) Accused-appellant is found guilty of murder and is sentenced to an indeterminate sentence of 10 years and 1 day of prision mayor, as minimum, to 18 years, 8 months, and 1 day of reclusion temporal as maximum (*People vs. Alcantara*, 163 SCRA 783 [1988]);

3) Accused-appellant is ordered to pay the heirs of the victim the amount of Fifty-Nine Thousand Pesos (P59,000.00) for actual damages incurred by reason of the death of the victim; and

4) The amount of P50,000.00 as moral damages awarded by the trial court is hereby reduced to P30,000.00.

Costs against appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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