

## SECOND DIVISION

[ G.R. No. 163267, May 05, 2010 ]

**TEOFILO EVANGELISTA, PETITIONER, VS. THE PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

To be guilty of the crime of illegal possession of firearms and ammunition, one does not have to be in actual physical possession thereof. The law does not punish physical possession alone but possession in general, which includes constructive possession or the subjection of the thing to the owner's control.<sup>[1]</sup>

This Petition for Review on *Certiorari*<sup>[2]</sup> assails the October 15, 2003 Decision<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 21805 which affirmed the January 23, 1998 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Pasay City, Branch 109 convicting petitioner Teofilo Evangelista for violation of Section 1, Presidential Decree (PD) No. 1866,<sup>[5]</sup> as amended, as well as the April 16, 2004 Resolution which denied petitioner's Motion for Reconsideration.

#### ***Factual Antecedents***

In an Information<sup>[6]</sup> dated January 31, 1996, petitioner was charged with violation of Section 1 of PD 1866 allegedly committed as follows:

That on or about the 30<sup>th</sup> day of January 1996, at the Ninoy Aquino International Airport, Pasay City, 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 the following items:

1. One (1) Unit 9mm Jericho Pistol, Israel with SN F-36283 with one (1) magazine;
2. One (1) Unit Mini-Uzi 9mm Israel Submachine gun with SN 931864 with two (2) magazines;
3. Nineteen (19) 9mm bullets.

without the corresponding permit or license from competent authority.

CONTRARY TO LAW.

After posting his bail, petitioner filed on February 14, 1996 an Urgent Motion for (a)

Suspension of Proceedings and (b) the Holding of A Preliminary Investigation.<sup>[7]</sup> The RTC granted the motion and, accordingly, the State Prosecutor conducted the preliminary investigation.

In a Resolution<sup>[8]</sup> dated March 6, 1996, the State Prosecutor found no probable cause to indict petitioner and thus recommended the reversal of the resolution finding probable cause and the dismissal of the complaint. Thereafter, a Motion to Withdraw Information<sup>[9]</sup> was filed but it was denied by the trial court in an Order<sup>[10]</sup> dated March 26, 1996, viz:

Acting on the "Motion to Withdraw Information" filed by State Prosecutor Aida Macapagal on the ground that [there exists] no probable cause to indict the accused, the Information having been already filed in Court, the matter should be left to the discretion of the Court to assess the evidence, hence, for lack of merit, the same is hereby denied. Let the arraignment of the accused proceed.

When arraigned on March 26, 1996, petitioner pleaded not guilty to the charge. Thereafter, trial ensued.

### ***Version of the Prosecution***

In the morning of January 30, 1996, Maximo Acierto, Jr. (Acierto), a Customs Police assigned at the Ninoy Aquino International Airport (NAIA) District Command, was informed by his superior that a certain passenger of Philippine Airlines (PAL) Flight No. 657 would be arriving from Dubai bringing with him firearms and ammunitions. Shortly after lunch, Acierto, together with Agents Cuymo and Fuentabella, proceeded to the tube area where they were met by a crewmember who introduced to them herein petitioner. Acierto asked petitioner if he brought firearms with him and the latter answered in the affirmative adding that the same were bought in Angola. Thereupon, Acierto was summoned to the cockpit by the pilot, Capt. Edwin Nadurata (Capt. Nadurata), where the firearms and ammunitions were turned over to him. Petitioner was then escorted to the arrival area to get his luggage and thereafter proceeded to the examination room where the luggage was examined and petitioner was investigated. In open court, Acierto identified the firearms and ammunitions.

During the investigation, petitioner admitted before Special Agent Apolonio Bustos (Bustos) that he bought the subject items in Angola but the same were confiscated by the Dubai authorities, which turned over the same to a PAL personnel in Dubai. Upon inquiry, the Firearms and Explosive Office (FEO) in Camp Crame certified that petitioner is neither registered with said office<sup>[11]</sup> nor licensed holder of aforesaid firearms and ammunitions. Bustos likewise verified from the Bureau of Customs, but his effort yielded no record to show that the firearms were legally purchased. Among the documents Bustos had gathered during his investigation were the Arrival Endorsement Form<sup>[12]</sup> and Customs Declaration Form.<sup>[13]</sup> A referral letter<sup>[14]</sup> was prepared endorsing the matter to the Department of Justice. Bustos admitted that petitioner was not assisted by counsel when the latter admitted that he bought the firearms in Angola.

SPO4 Federico Bondoc, Jr. (SPO4 Bondoc), a member of the Philippine National Police (PNP) and representative of the FEO, upon verification, found that petitioner is not a licensed/registered firearm holder. His office issued a certification<sup>[15]</sup> to that effect which he identified in court as Exhibit "A".

After the prosecution rested its case, petitioner, with leave of court, filed his Demurrer to Evidence,<sup>[16]</sup> the resolution of which was deferred pending submission of petitioner's evidence.<sup>[17]</sup>

### ***Version of the Defense***

The defense presented Capt. Nadurata whose brief but candid and straightforward narration of the event was synthesized by the CA as follows:

x x x On January 30, 1996, he was approached by the PAL Station Manager in Dubai, who informed him that a Filipino contract worker from Angola who is listed as a passenger of PAL flight from Dubai to Manila, was being detained as he was found in possession of firearms; that if said passenger will not be able to board the airplane, he would be imprisoned in Dubai; and that the Arabs will only release the passenger if the Captain of PAL would accept custody of the passenger [herein petitioner] and the firearms. Capt. Nadurata agreed to take custody of the firearms and the passenger, herein appellant, so that the latter could leave Dubai. The firearms were deposited by the Arabs in the cockpit of the airplane and allowed the appellant to board the airplane. Upon arrival in Manila, Capt. Nadurata surrendered the firearms to the airport authorities.

Meanwhile, in view of the unavailability of the defense's intended witness, Nilo Umayaw (Umayaw), the PAL Station Manager in Dubai, the prosecution and the defense agreed and stipulated on the following points:

1. That PAL Station Manager Mr. Nilo Umayaw was told by a Dubai Police that firearms and ammunitions were found in the luggage of a Filipino passenger coming from Angola going to the Philippines;
2. That he was the one who turned over the subject firearms to Captain Edwin Nadurata, the Pilot in command of PAL Flight 657;
3. That the subject firearms [were] turned over at Dubai;
4. That the said firearms and ammunitions were confiscated from the accused Teofilo Evangelista and the same [were] given to the PAL Station Manager who in turn submitted [them] to the PAL Pilot, Capt. Edwin Nadurata who has already testified;
5. That [these are] the same firearms involved in this case.<sup>[18]</sup>

### ***Ruling of the Regional Trial Court***

On February 4, 1997, the RTC rendered its Decision, the dispositive portion of which reads:

In view of all the foregoing, the Court finds accused TEOFILO E. EVANGELISTA guilty beyond reasonable doubt for violation of Sec. 1, P.D. 1866 as amended (Illegal Possession of Firearms and Ammunitions: (One (1) Unit Mini-Uzi 9mm Israel submachine gun with SN-931864 with two (2) magazines and nineteen (19) 9mm bullets) and hereby sentences him to imprisonment of Seventeen (17) Years and Four (4) Months to Twenty (20) Years.

The above-mentioned firearms are hereby ordered forfeited in favor of the government and is ordered transmitted to the National Bureau of Investigation, Manila for proper disposition.

SO ORDERED.<sup>[19]</sup>

On April 4, 1997, petitioner filed a Motion for New Trial<sup>[20]</sup> which the RTC granted. <sup>[21]</sup> Forthwith, petitioner took the witness stand narrating his own version of the incident as follows:

On January 28, 1996, he was at Dubai International Airport waiting for his flight to the Philippines. He came from Luwanda, Angola where he was employed as a seaman at Oil International Limited. While at the airport in Dubai, Arab policemen suddenly accosted him and brought him to their headquarters where he saw guns on top of a table. The Arabs maltreated him and forced him to admit ownership of the guns. At this point, PAL Station Manager Umayaw came and talked to the policemen in Arabian dialect. Umayaw told him that he will only be released if he admits ownership of the guns. When he denied ownership of the same, Umayaw reiterated that he (petitioner) will be released only if he will bring the guns with him to the Philippines. He declined and insisted that the guns are not his. Upon the request of Umayaw, petitioner was brought to the Duty Free area for his flight going to the Philippines. When he was inside the plane, he saw the Arab policemen handing the guns to the pilot. Upon arrival at the NAIA, he was arrested by the Customs police and brought to the arrival area where his passport was stamped and he was made to sign a Customs Declaration Form without reading its contents. Thereafter, he was brought to a room at the ground floor of the NAIA where he was investigated. During the investigation, he was not represented by counsel and was forced to accept ownership of the guns. He denied ownership of the guns and the fact that he admitted having bought the same in Angola.

### ***Ruling of the Regional Trial Court***

After new trial, the RTC still found petitioner liable for the offense charged but modified the penalty of imprisonment. The dispositive portion of the Decision dated January 23, 1998 reads:

In view of all the foregoing, the Court finds accused TEOFILO E. EVANGELISTA guilty beyond reasonable doubt for violation of Sec. 1, P.D. 1866 as amended (Illegal Possession of Firearms and Ammunitions: One (1) Unit 9mm Jerico Pistol, Israel with SN F-36283 with one (1) magazine; One (1) Unit Mini-Uzi 9mm Israel submachine gun with SN-931864 with two (2) magazines and nineteen (19) 9mm bullets and hereby sentences him to imprisonment of Six (6) Years and One (1) Day to Eight (8) Years and a fine of P30,000.00.

The above-mentioned firearms are hereby ordered forfeited in favor of the government and [are] ordered transmitted to the National Bureau of Investigation, Manila for proper disposition.

SO ORDERED.<sup>[22]</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA affirmed the findings of the trial court in its Decision dated October 15, 2003. It ruled that the stipulations during the trial are binding on petitioner. As regards possession of subject firearms, the appellate court ruled that Capt. Nadurata's custody during the flight from Dubai to Manila was for and on behalf of petitioner. Thus, there was constructive possession.

Petitioner moved for reconsideration<sup>[23]</sup> but it was denied by the appellate court in its April 16, 2004 Resolution.

Hence, this petition.

### **Issues**

Petitioner assigns the following errors:

- a. The Court of Appeals gravely erred in not acquitting Evangelista from the charge of Presidential Decree No. 1866, Illegal Possession of Firearms.
- b. The Court of Appeals gravely erred in not holding that Evangelista was never in possession of any firearm or ammunition within Philippine jurisdiction and he therefore could not have committed the crime charged against him.
- c. The Court of Appeals gravely erred in holding that Evangelista committed a continuing crime.
- d. The Court of Appeals gravely erred in disregarding the results of the preliminary investigation.<sup>[24]</sup>

We find the appeal devoid of merit.

At the outset, we emphasize that under Rule 45 of the Rules of Court, a petition for review on *certiorari* shall only raise questions of law considering that the findings of