

FIRST DIVISION

[G.R. No. 117033, February 15, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL
AVECILLA Y MOBIDO, ACCUSED-APPELLANT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Accused-appellant was charged with the crime of Qualified Illegal Possession of Firearm, committed as follows:

That on or about December 24, 1991, in the City of Manila, Philippines, the said accused, not being allowed or authorized by law to keep, possess and carry a firearm, did then and there wilfully, unlawfully, and knowingly have in his possession, control and custody a firearm, to wit:

One (1) .38 Caliber Revolver Colt (Paltik) marked made in USA

without first obtaining the necessary license and/or permit to carry and possess the same and in connection and by reason of such possession, did then and there wilfully, unlawfully and feloniously, with intent to kill, fire and shoot one Macario Afable, Jr. y Canqui, thus inflicting upon the latter mortal gunshots and injuries which caused the death of the latter as a consequence.^[1]

It appears from the records that at about 11:00 o'clock in the evening of December 24, 1991, accused-appellant arrived at the basketball court located on Dapo Street, Pandacan, Manila, and, for no apparent reason, suddenly fired a gun in the air. He then went to a nearby alley and, minutes later, proceeded to the closed store about four (4) meters away from the basketball court. There, he initiated an argument with the group of Boy Manalaysay, Jimmy Tolentino and Macario Afable, Jr. Afable tried to pacify accused-appellant, whereupon, the latter placed his left arm around Afable's neck and shot him pointblank on the abdomen. Afable ran toward the alley and accused-appellant ran after him. Another shot rang out, so one of the bystanders, Carlos Taganas, went to the alley and there, he saw accused-appellant and Afable grappling for possession of the gun. The Chief Barangay Tanod arrived and was able to wrest the gun away from accused-appellant, who immediately fled from the scene of the incident. Afable was rushed to the Philippine General Hospital, where he eventually expired.

On June 21, 1994, the Regional Trial Court of Manila, Branch 38, rendered judgment convicting accused-appellant of the crime of Qualified Illegal Possession of Firearm, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to indemnify and pay damages to the victim's heirs.^[2] Hence, this appeal filed by accused-appellant.

The records and the evidence show that the elements of the offense of qualified illegal possession of firearms, defined in the second paragraph of Section 1, Presidential Decree No. 1866, are present in this case. Specifically, there are:

1. there must be a firearm;
2. the gun was possessed by the accused;
3. the accused had no license from the government; and
4. homicide or murder was committed by the accused with the use of said firearm.^[3]

The prosecution sufficiently established by evidence that accused-appellant had in his custody and possession the following firearms and ammunitions:

1. One (1) .38 cal. Rev., Colt "paltik" without serial number, nickel plated with brown handle, two and one half inches barrel and marked "BC";
2. Three (3) .38 Caliber cartridge cases marked BC-1, BC-2, BC-3;
3. Two (2) .38 cal. Ammo. (used for test);
4. One (1) .38 cal. slug (deformed) marked "F" from Medico legal.^[4]

Likewise, per Certification of the Firearms and Explosives Office dated September 1, 1992,^[5] it was proved that accused-appellant was not a licensed or registered firearm holder of any kind and caliber.

Finally, there was an eyewitness account positively asserting that accused-appellant had the subject firearm in his possession and used it in shooting the victim.^[6] The medical examination on the victim disclosed that the gunshot wounds he sustained were caused by the same unlicensed firearm in accused-appellant's possession, and that the same were the direct cause of the death of the victim. The ballistics report established that the deformed .38 caliber slugs found in the victim's body were fired from the subject firearm.^[7] The victim's cause of death was determined as "cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wound, left antero-lateral thorax."^[8]

However, the law on illegal possession of firearms has been amended by Republic Act No. 8294, which took effect on July 6, 1994. The pertinent provision of the said law provides:

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 *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other