

SECOND DIVISION

[G.R. No. 126048, September 29, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO2
RODEL SAMONTE, ACCUSED-APPELLANT.**

DECISION

BUENA, J.:

This is an appeal from the decision dated May 13, 1996 of the Regional Trial Court, 5th Judicial Region, Branch 3, Legazpi City, finding accused-appellant Rodel Samonte guilty of Qualified Illegal Possession of Firearms under Presidential Decree No. 1866, thus:

"WHEREFORE, in view of all the foregoing considerations, this Court finds accused **RODEL SAMONTE** GUILTY beyond reasonable doubt of aggravated or qualified Illegal Possession of Firearms as defined and penalized under Section 1, Par. 2 of PD No. 1866 which pertinently reads: 'If homicide or murder is committed with the use of an unlicensed firearms, the penalty of death shall be imposed.' And hereby sentences him to suffer the DEATH PENALTY. However, by reason of Section 19(1), Article III of the 1987 Constitution which proscribes the imposition of the Death Penalty, the Death Penalty is hereby reduced to the next lower degree, or RECLUSION PERPETUA.

"This Court orders the forfeiture of the firearms, cal. .38 snub nose without serial number Exh. 'F', (paltik), with four (4) live ammunitions, and cal. .38 with serial # INP 1015903, Exh. 'E' with six (6) live ammunitions and other incidental paraphernalia Exhs. 'J, K, & L' found in the possession of the accused in favor of the Philippine National Police (PNP) to be disposed of in accordance with law."^[1]

The antecedents of the case are as follows:

On June 13, 1993, at about 1:00 AM, a shooting incident occurred along Rizal Street, Old Albay District, Legazpi City, resulting in the death of one Siegfred Perez.

^[2] Herein accused-appellant PO2 Rodel Samonte, a policeman detailed in the Mayors Office of Legazpi City, was one of the suspects in the fatal shooting of Perez. On June 15, 1993, Prosecution witnesses SPO4 Ruben Morales and Police Inspector Ricardo Gallardo confronted accused-appellant in the City Mayors Office and confiscated the latters service revolver. Thereupon, accused-appellant informed Inspector Gallardo that there is another revolver, a caliber .38 *paltik* in his house which he (Samonte) allegedly recovered from the culprit (apparently referring to Siegfred Perez) on June 13, 1993. Both firearms were submitted to the proper authorities for ballistic examination.^[3]

The results showed that the caliber .38 slug recovered from the body of deceased Perez was indeed fired from the caliber .38 (*paltik*) homemade revolver, marked *Smith and Wesson*, without serial number.^[4]

Lastly, prosecution witness Elmer Mabilin who chanced upon the above-mentioned firearms at the police station on June 15, 1993, identified both to be that of accused-appellant.^[5]

Charges of Murder and Illegal Possession of Firearms were separately filed against accused-appellant. This case before us stemmed from the Information dated August 16, 1993, the accusatory portion of which reads:

That on or about the 13th day of June, 1993, in the City of Legazpi, 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 an unlicensed .38 Caliber snub nose revolver (*paltik*) with four (4) live ammunitions, without first securing the necessary and requisite license or permit therefore (*sic*) from the proper authorities, which firearm was used in shooting SIEGFRED PEREZ resulting in the death of the latter.

CONTRARY TO LAW.^[6]

Upon arraignment on December 9, 1993, accused-appellant, assisted by Atty. Alfredo Kallos, entered a plea of not guilty.^[7]

After the prosecution rested its case, accused-appellant, through counsel, filed a Demurrer to Evidence but the same was denied in an order dated September 21, 1994.^[8] While accused-appellant opted not to testify, the defense presented Police Officer Brandon Dyanko and Lilia Santillan to testify on the police blotter regarding the June 13 shooting incident, and on the Memorandum for Preliminary Investigation,^[9] respectively. Thereafter, the trial court found accused-appellant guilty of the crime charged and was sentenced accordingly.

Hence this appeal with the following assigned errors:

"The trial court erred as follows:

"IN CONVICTING THE ACCUSED-APPELLANT OF AGGRAVATED OR QUALIFIED ILLEGAL POSSESSION OF FIREARMS, THE TRIAL COURT INTERFERED WITH BRANCH 9 OF THE SAME REGIONAL TRIAL COURT WHICH ACQUITTED HIM OF THE CRIME OF HOMICIDE.

"DESPITE THE PROSECUTIONS FAILURE TO ESTABLISH THE ELEMENTS CONSTITUTIVE OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS, THE TRIAL COURT CONVICTED THE ACCUSED-APPELLANT."^[10]

In support of the first assignment of error, accused-appellant contends that inspite of the fact that it was made known to the trial court that Branch 9 of the same court (Regional Trial Court of Legazpi City) acquitted him in Criminal Case No. 6336 for homicide, said court still entertained Criminal Case No. 6337 for illegal possession of

firearms aggravated by homicide under P.D. 1866.

This contention is not tenable. There was no interference by the trial court (Branch 3) with Branch 9 of the same Regional Trial Court which acquitted the accused-appellant of the crime of homicide. As pointed out by the Solicitor General, citing ***People vs. Quijada***,^[11] qualified illegal possession of firearms and homicide are distinct and separate offenses punishable under separate laws. Considering that accused-appellant allegedly used an unlicensed firearm in killing Siegfred Perez, he was charged with aggravated illegal possession of firearms. His acquittal of the homicide did not preclude his prosecution for aggravated illegal possession of firearms for they were two distinct and separate crimes.

The trial court convicted the accused-appellant of aggravated or qualified illegal possession of firearms as defined and penalized under Section 1, Paragraph 2 of P.D. No. 1866. However, on June 6, 1997, P.D. No 1866 was amended by R.A. 8294 which became effective on July 6, 1997, fifteen days after its publication in Malaya and Philippine Journal on June 21, 1997.

Section 1 of PD 1866, as amended by **RA 8294**, now reads:

"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) 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 firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided*, That no other crime was committed.

"The penalty of *prision mayor* in its minimum period and a fine of Thirty Thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber . 22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided, however*, That no other crime was committed by the person arrested.

"If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

"If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted *coup detat*, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted *coup detat*.

"The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow