

THIRD DIVISION

[G. R. No. 112090, October 26, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLINAR LAZARO Y SERVANIA, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA_REYES, J.:

This is an appeal from the decision^[1] dated 1 March 1993 of the Regional Trial Court of Naga City, Branch 24, finding accused-appellant Apolinar Lazaro y Servania guilty of the crime of illegal possession of firearms and ammunition under Section 1 of Presidential Decree No. 1866 and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the costs.

The information^[2] dated 6 May 1991, docketed as Criminal Case No. 91-3483, filed against accused-appellant alleged:

“That on or about May 5, 1991, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) handgun, Cal. 38 Revolver TM-Squires Bingham, SN-1029315 with 6 empty shells on (sic) the chamber, said accused not having any license and/or permit to possess and carry the same from the authorities charged with the issuance thereof. That the aforesaid firearm has been used in shooting two persons one of whom died and the other has (sic) serious condition at the Mother Seton Hospital.”

It appears that a separate case for homicide, docketed as Criminal Case No. 91-3487, was filed against the accused^[3] but was tried separately before the same judge.

Upon arraignment in Criminal Case No. 91-3483 (the illegal possession case), accused-appellant entered a plea of not guilty and thereafter, trial on the merits ensued.

To prove its case, the prosecution presented four (4) witnesses, namely: Pfc. Edilberto Puncia, Sgt. Alejandro Bonnet, Cpl. Jose Manzanero, and Major Jose A. Tuazon.

The facts as shown by the evidence of the prosecution reveal that on 05 May 1990, at around 3:30 p.m., Police Sergeant Alejandro Bonnet was on board a Mobile Patrol conducting an inspection of traffic policemen. While cruising along Panganiban Drive in Naga City, his attention was called by bystanders who were shouting that there was a bloodied man beside the driver of a Toyota type jeep that was traveling south. This prompted P/Sgt. Bonnet to go after the said vehicle.^[4]

When the Toyota jeep stopped along Gen. Luna Street, Bonnet was able to see a man with blood all over him beside the driver.

P/Sgt. Bonnet then instructed the driver to follow the mobile patrol to the Bicol Regional Hospital.^[5] When they arrived at the Bicol Regional Hospital, he saw that his station commander, Police Major Jose A. Tuazon, was waiting for them.

It appears that earlier Police Major Tuazon received a telephone call at around 4:00 a.m. informing him that a shooting incident had occurred at Queborac, Naga City^[6] Major Tuazon then immediately dispatched Capt. Guisic and Pat. Barbosa to the crime scene in order to investigate the report.

Moments later, Major Tuazon received another telephone call, this time from the Naga City Hospital informing him that a wounded man, on board a yellow colored Toyota Tamaraw jeep driven by a person armed with a handgun, was brought for treatment at the hospital^[7] Thereafter, Major Tuazon, together with Pfc. Edilberto Puncia proceeded to the Naga City Hospital. Upon their arrival, they were informed that the Toyota jeep had already left with the injured person and was on its way to the Bicol Regional Hospital. The police officers immediately proceeded to the said hospital. They took a shorter route and were able to arrive ahead of the Toyota jeep. After a short wait, they saw the Naga City Police Mobile Patrol arrive at the hospital escorting a Toyota Tamaraw jeep^[8]

The injured person was brought inside for treatment. As he was previously informed that the driver of the jeep was armed with a handgun, Major Tuazon ordered the said driver to step out of his jeep. He then saw the driver with a handgun tucked in his waist, pull out the handgun^[9] from its holster^[10] and drop it at the back of the driver's seat^[11]. Upon seeing the gun, Major Tuazon pulled the driver out of the vehicle, got hold of the gun which turned out to be a .38 caliber revolver bearing Serial Number 1029315^[12] The gun contained six empty shells.^[13]

Major Tuazon then confronted the driver and asked him why he was carrying a gun and whether he had a license to possess said firearm. The driver did not respond to his question^[14]

Maj. Tuazon brought the driver to the police headquarters and turned over the firearm to the duty investigator, Cpl. Jose Manzanero.^[15] At the police station, he learned that the name of the driver was Apolinar Lazaro, herein accused-appellant.

A certification dated August 20, 1991, issued by Supt. Antonio T. Sierra, Chief of the Firearms and Explosives Office (FEO) at Camp Crame was presented in court by the public prosecutor. The certification stated that accused-appellant is not a licensed or registered firearm holder of any kind or caliber.^[16]

For his part, accused-appellant recounted the circumstances which led to his capture at the Bicol Regional Hospital. He testified that on 5 May 1991, at around 9:00 a.m., he, together with his nephew Manolo Lazaro and Ricardo Ronquillo went to Marupit, Camaligan, Camarines Sur for a drinking spree.^[17] While drinking, accused-appellant and Ricardo Ronquillo allegedly had a little discussion about a fishing net. They left the place at around 3:00 p.m. onboard a Toyota Tamaraw jeepney being driven by his nephew, Manolo Lazaro.^[18] On the way back, Manolo Lazaro stopped the jeep in order to urinate and while he was alighting therefrom, accused-appellant

saw Ronquillo draw a gun and point it at him (accused-appellant). Allegedly in self-defense, accused-appellant grappled for the possession of the gun and as a result, he and Ronquillo fell to the ground.^[19] As they continued grappling for the gun, accused-appellant heard several shots go off. Immediately after the shots were fired and while still grappling for possession of the gun, he heard somebody shout that he was hit. He realized that it was his nephew, Manolo Lazaro, who was shot and who was telling accused-appellant to bring him to the hospital. As he was still grappling with Ronquillo, he could not immediately do anything about his nephew's cries for help. After a while, accused-appellant felt Ronquillo weakening and stop moving. He then drove Manolo Lazaro to the hospital as he was shouting for help. Accused-appellant claimed that he did not know what had happened to Ronquillo after he left him at the scene of the incident. He also could not recall where he had placed the gun.^[20]

Accused-appellant declared that he drove the Tamaraw jeepney to the Naga City Hospital but they were not accepted as the hospital had no facilities for emergencies.^[21] While driving to another hospital, he noticed a police car trailing them. He then gave a signal to the police car to escort them to a hospital. One of the policemen then alighted from the car and inspected the jeepney. The policeman did not take anything from the jeepney. The policeman then signaled accused-appellant to follow the patrol car to the Bicol Regional Hospital.^[22] When they reached the hospital, accused-appellant went down from the Tamaraw jeepney and assisted in bringing down his nephew, Manolo Lazaro. Accused-appellant was then told by the policemen to ride in the police mobile car. As they were about to leave the hospital, he saw several persons searching the jeepney. The policemen then brought him to the City Jail where he remembered being asked why he was carrying a gun.^[23] When the gun was shown to him, accused-appellant stated that he was not sure whether it was the same gun he was grappling with Ronquillo for, as the incident happened quite fast. He also cannot remember Major Tuazon's account that accused-appellant pulled the gun and holster from his waist. What he remembers is that after alighting from the jeepney, he went around the jeepney and assisted Manolo because the latter was then leaning on the side of the jeepney.^[24]

In rebuttal, the prosecution presented Dr. Joel Jurado who testified that he conducted the autopsy on Ricardo Ronquillo. He found that the cause of death was due to loss of blood from his gunshot wounds.^[25] The victim died instantaneously. In his opinion, the injuries were not inflicted accidentally as more than one shot was inflicted on the victim.^[26]

In sur-rebuttal, accused-appellant testified anew and stated that both he and Ronquillo fell from the jeepney while grappling for the gun. He testified that during the struggle, there were times when the gun was in his possession and there were also times when it was in the possession of Ronquillo.^[27] He cannot recall who was holding the gun when it was fired.

After trial, the lower court rendered a decision dated 1 March 1993^[28] finding accused-appellant guilty as charged, the dispositive portion of which reads:

WHEREFORE, for all the foregoing, the Court finds accused Apolinar "Poly" Lazaro guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 1 of Presidential Decree No. 1866 and hereby sentences

said accused to suffer the penalty of *reclusion perpetua*, and to pay the costs. The handgun (Exh. A) and the spent shells (Exhs. B, B-1 to B-5) are confiscated and ordered forfeited in favor of the government.”

Hence, this appeal where accused-appellant raises the sole assignment of error that the trial court erred in finding the accused guilty beyond reasonable doubt of the crime of illegal possession of firearms and ammunition qualified by homicide.^[29]

In cases involving illegal possession of firearms under P.D. 1866^[30], as amended, the prosecution has the burden of proving the elements thereof, viz.: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed it does not have the corresponding license or permit to possess the same.^[31]

In the case at bench, the first element is beyond dispute as the subject firearm and six empty shells were recovered from the accused-appellant while he was alighting from the Tamaraw jeepney. Thus, Major Tuazon testified:

Q: What did you actually do when the car stopped?

A: Being aware that the driver was then armed, I was ready to get hold of him, and when I saw the gun tacked on his waist, he pulled it and dropped it at his back.

Q: You said he pulled a handgun from his waist, will you please indicate on what particular place was it placed?

A: It was near, it was more in front of his waist. (The witness is pointing to the rightside middle portion of his waistline).

Q: And, in relation to the driver, where were you then when you saw him pulled (sic) that gun?

A: I was very near because I wanted to get hold of him.

Q: And, where did he dropped (sic) the said handgun, as you said?

A: Right at his back, at the back of the driver’s seat.

Q: So, he just dropped it on the seat behind the driver’s seat?

A: Yes, sir.

Q: And, that gun has a holster?

A: Yes, Sir. Inside a holster bag tacked on his waist.

Q: When he pulled that gun---did he pull that gun alone?

A: He pulled it together with the holster.

Q: And he placed the gun inside the holster right behind the driver’s seat?

A: He pulled the gun together with the holster and dropped the same at his back.

Q: By the way, what kind of gun was that? A revolver?

A: Yes, Sir.

Q: And, what did you do upon seeing that the gun together with the holster was dropped by the accused at his back?

A: I pulled the driver out, and I immediately got hold of the gun.”^[32]

The subject firearm, its holster and the six empty shells were identified and offered in evidence during the trial.

As to the second element, accused-appellant contends that the prosecution failed to prove the absence of a license to carry a firearm as the prosecution merely marked in evidence a certification from the Firearms and Explosive Section in Camp Crame without presenting the person who issued the certification himself, a certain Antonio Sierra. Over the objection of accused-appellant’s counsel, the lower court admitted the exhibit on the ground that the same is an official public record and because the fiscal stated that he himself saw the signatory sign the document.

The records of the case show that the prosecution merely presented in court the certification from the Firearms and Explosive Office before formally offering its documentary evidence. Thus:

PROS. ESTELA:

I am, Your Honor, please, formally submitting the certification issued at Camp Crame on August 20, 1991 of the firearms and explosives office, issued by the firearms and explosive office, issued by A.T. Sierra, Service Sup. MNSA, PNB Chief... firearms and explosive office to the effect which reads --- this is to certify that Apolinar Lazaro is not a licensed or registered firearms holder of any kind or caliber... (the fiscal is reading)

I would like to request that it be marked as Exhibit “D,” for the purpose of this is to show to the Honorable Court that this accused is not a registered licensed holder of the subject firearm, and your Honor, may I please be allowed to rest my case.

With the formal offer of evidence for the prosecution, with the testimonies of Pfc. Ed. Puncia, Sgt. Alejandro Bonnet, Cpl. Jose Manzanero, and Maj. Jose Tuazon, and the following (documentary) exhibits---

X X X

Exhibit “D” is the certification of the firearms explosive office to the effect that herein accused is not a licensed or registered holder of any firearm. This is dated August 20, 1991.

Exhibit “D-1” which I request to be marked as such --- the signature of Antonio A. Sierra, the issuing officer of the firearms and explosives office. The signature was affixed in my presence when I personally procured this certification from the Camp Crame.

With all of these evidence, testimonial, physical and documentary evidence, we close the presentation of evidence for the prosecution.