

## THIRD DIVISION

[ G.R. No. 118078, July 15, 1997 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR VILLANUEVA, ACCUSED-APPELLANT.**

### D E C I S I O N

**FRANCISCO, J.:**

The five (5) accused namely Reynaldo Bartolata alias "Tilo", Oscar Villanueva, Johnny Sola alias "Tangane", Dagoy Sola and Bobong Sola<sup>[1]</sup> were charged with the crime of illegal possession of firearms allegedly committed as follows:

"That on or about April 13, 1993, in the afternoon thereof, at Sitio Toquip, Barangay Jagna-an, Municipality of San Jacinto, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession and control three (3) lantakas and one (1) sumpak, without first having obtained the necessary permit and license from the competent authority."<sup>[2]</sup>

Of the five accused mentioned above, only Reynaldo Bartolata and Oscar Villanueva were apprehended by the police authorities while the Sola brothers, Johnny, Dagoy and Bobong are at large up to the present.<sup>[3]</sup> At the arraignment, Bartolata and Villanueva pleaded not guilty to the crime charged against them. Trial ensued during which the prosecution presented SPO4 Pascual Delavin, Bgy. Captain Jose Nuñez, and Bgy. Tanod Chief Gomez Samson as witnesses. From their testimonies may be culled the following factual antecedents of the instant case:

Sometime in March of 1993, Jose Nuñez, the Barangay Captain of Danao, San Jacinto, Masbate made a report to the Chief/Station Commander of the Philippine National Police (PNP) of San Jacinto, Masbate regarding the presence of persons who were seen carrying arms and roaming around the vicinity of Danao.<sup>[4]</sup> On April 13, 1993, the Station Commander of the PNP ordered a team of six (6) policemen headed by SPO4 Pascual Delavin to proceed to Barangay Danao to verify the said report.<sup>[5]</sup> When they reached Barangay Danao, SPO4 Delavin requested Barangay Tanod Gomez Samson to guide them around the area as the Barangay Captain was then in Masbate.<sup>[6]</sup> Not finding the malefactors in Danao, they moved on to Sitio Toquip in the neighboring Barangay of Jagna-an. Along the trail to Sitio Toquip, they encountered the five (5) accused who were all armed. Bartolata, Villanueva and Johnny Sola were each carrying a homemade gun, locally known as "lantaka"<sup>[7]</sup> while Dagoy Sola was armed with a shorter homemade gun locally known as "sumpak",<sup>[8]</sup> and recovered from Bobong Sola was a "bolo". When asked to surrender, accused Bartolata and Villanueva laid down their arms and surrendered to

the team of SPO4 Delavin, but the other accused immediately fled the scene of the crime and were able to evade apprehension.<sup>[9]</sup>

In their defense, accused Villanueva and Bartolata denied the charges against them and pleaded their respective alibis. According to Villanueva, he was at their farm in Sitio Toquip on April 13, 1993, at around 3:00 o'clock in the afternoon when a certain Toti Almoradie arrived and asked him of the whereabouts of the Sola brothers.<sup>[10]</sup> Later, seven (7) policemen also arrived and inquired about the location of the house of Bartolata. He informed the policemen that the house of Bartolata was situated in Danao, San Jacinto, Masbate. The policemen then requested him to accompany them to the house of Bartolata in Danao. Upon reaching the house of Bartolata, the policemen started firing their guns, and from a distance of about eight (8) arm's length, Villanueva saw that the policemen had tied Bartolata's hands behind his back and that one of them, later identified as Patrolman Relente boxed Bartolata. Thereafter, the policemen ordered both Villanueva and Bartolata to go with them to San Jacinto. On the way to San Jacinto, the group passed by a house and one of the policemen asked Villanueva who the owner of the said house was. When Villanueva replied that it is his house, the policemen showed him three (3) "lantakas" and a "sumpak"<sup>[11]</sup> and told him: "Maybe you own these guns because we took them from your house."<sup>[12]</sup> Villanueva persistently denied ownership of the guns. However, during cross-examination, he pointed out that the homemade guns could have been left in his house by Johnny Sola without his knowledge as his house was often left unoccupied.<sup>[13]</sup>

For his part, accused Bartolata claimed that on the said date and time of the incident he was with his wife, Josefa Villanueva, in their house in Sitio Toquip in Barangay Jagna-an, San Jacinto, Masbate. He was roofing their house when Toti Almoradie and Patrolman Relente arrived. The two went upstairs and Relente allegedly tied Bartolata's hands behind his back then boxed and even kicked him. On the other hand, Toti took the bolo which Bartolata was using in roofing the house and gave the same to Relente. The mauling of Bartolata continued despite Josefa's pleas for Relente to stop beating her husband.<sup>[14]</sup> The latter lost consciousness and when he came to he was already in the house of Oscar Villanueva who was also picked up by the police.<sup>[15]</sup>

On July 27, 1994, Branch 50 of the Regional Trial Court of San Jacinto, Masbate rendered a decision finding both accused Reynaldo Bartolata and Oscar Villanueva guilty of Illegal Possession of Firearms penalized under Section 1 of P.D. No. 1866.<sup>[16]</sup> In convicting the accused, the trial court relied on the time honored doctrine that "positive identification of the accused and positive testimonies as in the instant case should prevail over the former's alibi and denials of the commission of the crime for which they are charged since great weight is generally accorded to the positive testimony of the prosecution witnesses than the accused's denial."<sup>[17]</sup> Giving full faith and credit to the testimonies of the prosecution witnesses, the trial court likewise cited the failure of the defense to ascribe to the former any improper or ulterior motive for testifying against the accused.<sup>[18]</sup> Furthermore, while the trial court found the prosecution witnesses to be consistent and credible in their testimonies that the accused were caught in flagrante delicto,<sup>[19]</sup> it noted that the testimonies of the defense witnesses are inconsistent, incredible and not worthy of

belief.<sup>[20]</sup>

Accused Bartolata died after the promulgation of the decision in the trial court, hence only accused Villanueva was able to interpose this appeal before us raising the following lone assignment of error:

**"THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF ILLEGAL POSSESSION OF FIREARMS (VIOL. OF P.D. 1866) DESPITE THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES AND THE INADMISSIBLE EVIDENCE AGAINST HIM, BEING THE FRUIT OF ILLEGAL SEARCH AND SEIZURE."**<sup>[21]</sup>

In seeking to uphold the conviction of Villanueva, the Office of the Solicitor General (OSG) countered with its arguments that: (1) Findings of the trial court on credibility of witnesses are given great weight by appellate courts,<sup>[22]</sup> and (2) The arrest of the appellant in flagrante delicto was lawful under Section 5 [a] of Rule 113 of the Rules of Court.<sup>[23]</sup>

After a careful review of the records of this case, we find the evidence presented by the prosecution to be insufficient to convict accused-appellant Oscar Villanueva of the crime of illegal possession of firearm.

In crimes involving illegal possession of firearm, 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.<sup>[24]</sup> The latter is a negative fact which constitutes an essential ingredient of the offense of illegal possession, and it is the duty of the prosecution not only to allege it but also to prove it beyond reasonable doubt.<sup>[25]</sup> It is this duty that the prosecution has miserably failed to discharge in the case at bench. We searched the records for any evidence, either testimonial or documentary, to prove the non-possession by the accused-appellant of the requisite license or permit and found none. The prosecution had apparently omitted presenting this very vital piece of evidence, and the trial court, either by inadvertence or ignorance, gave it nary a thought and proceeded to convict the accused. It is this very same fatal flaw that led us to reverse the conviction of Nilo Solayao for possession of a 49-inch long homemade firearm, locally known as "latong", in the case of People vs. Solayao.<sup>[26]</sup> We said there that:

"while the prosecution was able to establish the fact that the subject firearm was seized by the police from the possession of appellant, without the latter being able to present any license or permit to possess the same, such fact alone is not conclusive proof that he was not lawfully authorized to carry such firearm. In other words, such fact does not relieve the prosecution from its duty to establish the lack of a license or permit to carry the firearm by clear and convincing evidence, like a certification from the government agency concerned."

"Putting it differently, 'when a negative is averred in a pleading, or a plaintiff's case depends upon the establishment of a negative, and the