

[SYLLABUS]

[G.R. No. 115988, March 29, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO LIAN Y VERANO, ACCUSED-APPELLANT.

D E C I S I O N

REGALADO, J.:

In this appeal, accused-appellant Leo Lian y Verano bewails his conviction by the Regional Trial Court, Branch 31, of Agoo, La Union for the offense of illegal possession of firearm and ammunition punished by Section 1 of Presidential Decree No. 1866, as amended. Appellant maintains that the charge against him under said law should have been dismissed by the trial court in view of the absence of *animus possidendi* on his part. The evidence, however, shows otherwise.

On October 11, 1990, Second Assistant Provincial Prosecutor Rogelio C. Hipol commenced Criminal Case No. A-2106 before the trial court through an information indicting appellant with illegal possession of firearm and ammunition, with the allegations--

"That on or about the 27th day of June, 1990, in the Municipality of Pugo, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully, and feloniously have in his actual possession, control, and custody, one (1) caliber .45 pistol with Serial No. 603514 and one (1) live ammunition of the same caliber, without the corresponding license to possess the same and/or permit to carry it outside his residence.

CONTRARY TO PRESIDENTIAL DECREE NO. 1866."^[1]

At his arraignment on January 8, 1991 with the assistance of *counsel de officio*, appellant entered a negative plea.^[2] In the trial that followed, the prosecution presented as its witnesses Sgt. Orlandino Lales, the apprehending police officer; Abelardo Macaraeg, a *barangay tanod* in Pugo; and Capt. Edgar Basbas of the Philippine National Police (PNP) Provincial Command of San Fernando, La Union. The firearm and ammunition confiscated from appellant were likewise offered as evidence in court. On the other hand, it was only appellant who appeared in his defense. The decision of the trial court promulgated on August 10, 1993 pronounced appellant guilty as charged and sentenced him to suffer the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua*, and to pay the costs. The seized articles were ordered to be turned over to the PNP Director General for proper disposition.^[3]

Appellant was apprehended in the early evening of June 27, 1990 having in his possession a caliber .45 Colt pistol, together with a live bullet, at the public market of Pugo, La Union by Sgt. Orlandino Lales, PNP Station Commander of said municipality. Prior to appellant's apprehension, one Abelardo Macaraeg, a *barangay tanod*, had reported to Lales, who was then at the Pugo police station, that he saw Lian at the public market of Pugo with a handgun tucked in his waist. Lales then proceeded to the market to look for appellant, but to no avail. He then went home but, a few minutes thereafter, Macaraeg reappeared and informed him that Lian had returned to the market.^[4]

Once more, Lales sought out appellant at the marketplace. This time, he saw appellant standing near an electric post. He forthwith approached appellant and, at that instant, he noticed something which was bulging at the latter's waist. Lales then asked appellant in Ilocano, "What is that protruding in your waistline?" but this elicited an angry look from Lian. The latter then reached toward his waist as if to draw something therefrom and, in the process, the handgun tucked there was revealed. Lales, who was then only a meter away from appellant, was able to quickly grab the firearm which, upon inspection, had a bullet in its chamber. As appellant could not show any license to carry the firearm, Lales arrested him and brought him to the police station.^[5]

Appellant admits having had in his possession the firearm, together with a bullet, at the time of his apprehension. What he underscores is the fact that he had all along intended to surrender that firearm. He narrated during his trial that in the afternoon of June 27, 1990, he went to his sister's house at Poblacion East of Pugo where he partook of some food. After eating, he proceeded to open a brown bag which he had earlier found in the bus where he rode. Appellant says he saw a firearm inside, wrapped in a handkerchief. He took the gun and tucked it in his waist before he went on his way to surrender it. At the public market, he met some friends whom he had not seen for a while and he had a drinking spree with them. Appellant adds that he forgot all about the gun, and that he and his friends continued with their version of an alcoholic soiree that evening. It was shortly thereafter, he now recalls, that he was accosted by Sgt. Lales at the market.^[6]

In his appellate brief, Lian imputes to the trial court the reversible error of having convicted him of the offense charged in spite of insufficiency of evidence. The element of intent to possess or *animus possidendi*, according to appellant, has not been established by the prosecution. In his words, his possession of the subject firearm was merely temporary or incidental and that it was really his intention to surrender the same from the start. Appellant furthermore argues that he did not have control over the firearm since it was immediately confiscated from him before he could surrender the same. These are puerile and specious arguments.

Presidential Decree No. 1866, as amended, which was passed to curb criminality affecting public order and safety, punishes, *inter alia*, both actual physical possession and constructive possession of firearms, ammunition, and explosives without authority or license therefor. Ownership thus is not an essential element. In the case of constructive possession, it refers to the subjection of the articles in question to one's control and management. Once the prosecution evidence indubitably points to possession without the requisite authority or license, coupled

with *animus possidendi* or intent to possess on the part of the accused, conviction for violation of the said law must follow.^[7]

Contrarily, where there is no *animus possidendi* or intent to possess by the accused, as when one's possession or control of a firearm is merely temporary, incidental, or casual, no violation of Presidential Decree No. 1866, as amended, may be successfully imputed to such an individual. *Animus possidendi*, it has been held, is a state of mind, the presence and determination of which is largely dependent on the circumstances obtaining in each case. What the courts must take into consideration are the prior and coetaneous acts of the accused and the surrounding circumstances anent his possession of the prohibited articles.^[8]

In the case of appellant, there is no dispute, for he admitted in court that he was apprehended possessing a firearm and live bullet without the necessary authority or license. Moreover, the police officer who arrested him, Sgt. Orlandino Lales, testified to the fact that at the time he nabbed Lian, he asked the former whether he had any license to carry the gun but appellant could not produce then or thereafter the necessary documents that would have attested to lawful possession of the firearm and its ammunition. This much regarding Sgt. Lales' testimony was also conceded by appellant himself. Also, Sgt. Lales categorically identified in court the firearm and live bullet that he had confiscated from appellant who was in actual physical possession thereof. Hence, the first essential element of possession without authority or license has been clearly demonstrated by the prosecution.

It is on the matter of putative lack of *animus possidendi* that appellant is essaying his appeal for reversal of the trial court's judgment. Appellant testified that from the time he first got hold of the firearm, he had thought of surrendering it to the authorities, knowing the danger of possessing it, and that he was on his way to the municipal town hall to surrender it when he unfortunately ran into long-lost friends at the market who invited him for some drinks. It was on account of this that he forgot all about the firearm. He hastens to add that he could very well have properly given the gun to Sgt. Lales were it not for the fact that the firearm was unceremoniously seized from him, thus affording him no opportunity for effecting its lawful surrender.

Appellant's foregoing narration pitiably bears the badges or indicia of incredibility. It is elementary that for testimonial evidence to be regarded with credence, it must have been declared not only by a credible witness but that the same must in itself be believable. Conformity with human experience is the test. On appellant's version, we need merely to refer to this rebuttal of the Solicitor General regarding the former's arguments:

"Appellant does not deny that he indeed had the gun in his possession, hence, he has the burden of proving that his possession thereof was merely temporary or incidental. His defense, however, that he merely found the gun in his bag and intended to surrender the same to the authorities is incredible and unbelievable.

"First, if appellant really had the intention of surrendering the gun to the authorities, he should have done so right away. The danger of carrying a gun, loaded at that, should have been foremost in his mind instead of joining his friends for a drink before surrendering the gun.