

SECOND DIVISION

[G.R. No. 119220, September 20, 1996]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NILO SOLAYAO ACCUSED-APPELLANT.**

D E C I S I O N

ROMERO, J.:

Accused-appellant Nilo Solayao was charged before the Regional Trial Court of Naval, Biliran, Branch 16, with the crime of illegal possession of firearm and ammunition^[1] defined and penalized under Presidential Decree No. 1866.

The lone prosecution witness, SPO3 Jose Niño, narrated that at about 9:00 o'clock in the evening of July 9, 1992, with CAFGU members Teofilo Llorad, Jr. and Cecilio Cenining, he went to Barangay Caulangohan, Caibiran, Biliran. They were to conduct an intelligence patrol as required of them by their intelligence officer to verify reports on the presence of armed persons roaming around the barangays of Caibiran.^[2]

From Barangay Caulangohan, the team of Police Officer Niño proceeded to Barangay Onion where they met the group of accused-appellant Nilo Solayao numbering five. The former became suspicious when they observed that the latter were drunk and that accused-appellant himself was wearing a camouflage uniform or a jungle suit. Accused-appellant's companions, upon seeing the government agents, fled.^[3]

Police Officer Niño told accused-appellant not to run away and introduced himself as "PC," after which he seized the dried coconut leaves which the latter was carrying and found wrapped in it a 49-inch long homemade firearm locally known as "latong." When he asked accused-appellant who issued him a license to carry said firearm or whether he was connected with the military or any intelligence group, the latter answered that he had no permission to possess the same. Thereupon, SPO3 Niño confiscated the firearm and turned him over to the custody of the policeman of Caibiran who subsequently investigated him and charged him with illegal possession of firearm.^[4]

Accused-appellant, in his defense, did not contest the confiscation of the shotgun but averred that this was only given to him by one of his companions, Hermogenes Cenining, when it was still wrapped in coconut leaves. He claimed that he was not aware that there was a shotgun concealed inside the coconut leaves since they were using the coconut leaves as a torch. He further claimed that this was the third torch handed to him after the others had been used up.^[5] Accused-appellant's claim was corroborated by one Pedro Balano that he indeed received a torch from Hermogenes Cenining which turned out to be a shotgun wrapped in coconut leaves.^[6]

On August 25, 1994, the trial court found accused-appellant guilty of illegal possession of firearm under Section 1 of Presidential Decree No. 1866 and imposed upon him the penalty of imprisonment ranging from reclusion temporal maximum to reclusion perpetua. The trial court, having found no mitigating but one aggravating circumstance of nighttime, sentenced accused-appellant to suffer the prison term of reclusion perpetua with the accessory penalties provided by law.^[7] It found that accused-appellant did not contest the fact that SPO3 Nino confiscated the firearm from him and that he had no permit or license to possess the same. It hardly found credible accused-appellant's submission that he was in possession of the firearm only by accident and that upon reaching Barangay Onion, he followed four persons, namely, Hermogenes Cenining, Antonio Sevillano, Willie Regir and Jovenito Jaro when he earlier claimed that he did not know his companions.^[8]

Accused-appellant comes to this Court on appeal and assigns the following errors:

"I. The trial court erred in admitting in evidence the homemade firearm.

"II. The trial court erred in appreciating the aggravating circumstance of nighttime in the imposition of the maximum penalty against the accused-appellant."^[9]

This Court, in the case of People v. Lualhati^[10] ruled that 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.

In assigning the first error, accused-appellant argued that the trial court erred in admitting the subject firearm in evidence as it was the product of an unlawful warrantless search. He maintained that the search made on his person violated his constitutional right to be secure in his person and effects against unreasonable searches and seizures. Not only was the search made without a warrant but it did not fall under any of the circumstances enumerated under Section 5, Rule 113 of the 1985 Rules on Criminal Procedure which provides, inter alia:

"A peace officer or a private person may, without a warrant, arrest a person when in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense."

Hence, the search being unlawful, the homemade firearm confiscated from him is inadmissible in evidence for being "the fruit of the poisonous tree."^[11] As such, the prosecution's case must necessarily fail and the accused-appellant acquitted.

Accused-appellant's arguments follow the line of reasoning in People v. Cuizon, et al.^[12] where this Court declared: "... emphasis is to be laid on the fact that the law requires that the search be incident to a lawful arrest, in order that the search itself may likewise be considered legal. Therefore, it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Were a search first undertaken, then an arrest effected based on evidence produced by the search, both such search and arrest would be unlawful, for being contrary to law."

Under the circumstances obtaining in this case, however, accused-appellant's

arguments are hardly tenable. He and his companions' drunken actuations aroused the suspicion of SPO3 Niño's group, as well as the fact that he himself was attired in a camouflage uniform or a jungle suit^[13] and that upon espying the peace officers, his companions fled. It should be noted that the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming around the barangays of Caibiran.^[14]

The circumstances in this case are similar to those obtaining in Posadas v. Court of Appeals^[15] where this Court held that "at the time the peace officers identified themselves and apprehended the petitioner as he attempted to flee, they did not know that he had committed, or was actually committing the offense of illegal possession of firearm and ammunitions. They just suspected that he was hiding something in the buri bag. They did not know what its contents were. The said circumstances did not justify an arrest without a warrant."

This Court, nevertheless, ruled that the search and seizure in the Posadas case brought about by the suspicious conduct of Posadas himself can be likened to a "stop and frisk" situation. There was a probable cause to conduct a search even before an arrest could be made.

In the present case, after SPO3 Nino told accused-appellant not to run away, the former identified himself as a government agent.^[16] The peace officers did not know that he had committed, or was actually committing, the offense of illegal possession of firearm. Tasked with verifying the report that there were armed men roaming around in the barangays surrounding Caibiran, their attention was understandably drawn to the group that had aroused their suspicion. They could not have known that the object wrapped in coconut leaves which accused-appellant was carrying hid a firearm.

As with Posadas, the case at bar constitutes an instance where a search and seizure may be effected without first making an arrest. There was justifiable cause to "stop and frisk" accused-appellant when his companions fled upon seeing the government agents. Under the circumstances, the government agents could not possibly have procured a search warrant first.

Thus, there was no violation of the constitutional guarantee against unreasonable searches and seizures. Nor was there error on the part of the trial court when it admitted the homemade firearm as evidence.

As to the question of whether or not the prosecution was able to prove the second element, that is, the absence of a license or permit to possess the subject firearm, this Court agrees with the Office of the Solicitor General which pointed out that the prosecution failed to prove that accused-appellant lacked the necessary permit or license to possess the subject firearm.^[17]

Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution. The absence of such license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm, and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt.^[18]