

## EN BANC

[ G.R. No. 131592-93, February 15, 2000 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIAN CASTILLO Y LUMAYRO, ACCUSED-APPELLANT.**

### DECISION

**PUNO, J.:**

With the passage of Republic Act No. 8294 on June 6, 1997, *the use of an unlicensed firearm in murder or homicide is now considered, not as a separate crime, but merely a special aggravating circumstance.*

In the case at bar, appellant JULIAN CASTILLO y LUMAYRO was charged with *Murder* and *Illegal Possession of Firearms* in two (2) separate Informations, thus:

Criminal Case No. 45708:

"That on or about the 14<sup>th</sup> day of November, 1995 in the City of Iloilo, Philippines and within the jurisdiction of this Court, armed with a handgun, with deliberate intent and without justifiable motive, with evident premeditation, by means of treachery and with a decided purpose to kill, did then and there wilfully, unlawfully and criminally shoot, hit and wound Rogelio Abawag with the said gun, with which herein accused was then provided at the time, thereby causing upon said Rogelio Abawag bullet wounds on vital parts of his body, which caused his instantaneous death.

"CONTRARY TO LAW."<sup>[1]</sup>

Criminal Case No. 45709:

"That on or about the 14<sup>th</sup> day of November, 1995 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without justifiable motive, have in his possession and control one (1) Homemade .38 caliber revolver without serial number (and) three (3) live ammunitions without the authority and permit to possess or carry the same.

"CONTRARY TO LAW."<sup>[2]</sup>

The scene of the crime was the then on-going construction site of Gaisano Building in Lapaz, Iloilo City. On November 14, 1995, at about 8 a.m., ROBERTO LUSTICA, a construction worker, was on the last rung of the stairs on the third floor of the Gaisano building when he saw his co-worker ROGELIO ABAWAG being closely pursued by accused JULIAN CASTILLO, a lead man in the same construction site. During the chase, the accused pointed a gun at Abawag and shot him. Abawag, then

about a half meter away from the accused, fell on his knees beside a pile of hollow blocks.<sup>[3]</sup>

*FRANKLIN ACASO*, a mason working on the third floor of the Gaisano building, heard the first shot. Initially, he did not pay attention to it as he thought that the sound came from one of their construction equipments. Seconds later, he heard a second shot and a person screaming: "Ouch, that is enough!" When he looked towards the direction of the sound, he saw the accused in front of Abawag, about a meter away, pointing a .38 caliber revolver at the latter. Abawag was then leaning on a pile of hollow blocks, pleading for mercy. The accused shot Abawag a third time despite the latter's imploration. The accused then fled, leaving Abawag lifeless.<sup>[4]</sup>

The management of Gaisano reported the shooting incident to the police authorities who immediately rushed to the scene of the crime. *JUN LIM*, alias "Akoy," brother-in-law of the victim and also a construction worker at the Gaisano, volunteered to go with the police and assist them in locating the accused.

The police, accompanied by Akoy, proceeded to Port San Pedro where they saw the accused on board a vessel bound for Cebu. When they boarded the vessel, Akoy positively identified the accused to the police as the assailant. The accused attempted to escape when the police identified themselves but the police caught up with him. Upon inquiry, the accused denied complicity in the killing of Abawag. The police found in his possession a .38 caliber handmade revolver, three (3) empty shells and three (3) live ammunitions. Further inquiry revealed that the accused owned the gun but had no license to possess it. The police then took the accused into custody and charged him for the murder of Abawag and for illegal possession of firearm.<sup>[5]</sup>

The self-defense theory hoisted by the accused who testified solely for the defense was not given credence by the trial court. Thus, he was convicted of *Homicide*, as the prosecution failed to prove the alleged qualifying circumstances of evident premeditation and treachery, and of *Illegal Possession of Firearm, aggravated by homicide*. The trial court disposed as follows:

"WHEREFORE, premises considered and finding the accused guilty of the crimes of homicide and illegal possession of firearm aggravated by homicide beyond the shadow of the doubt, he is hereby sentenced as follows:

"1) *For the crime of homicide, he is sentenced to an indeterminate penalty of imprisonment of Twelve (12) years of prision mayor, as minimum, to Seventeen (17) years and Four (4) months of reclusion temporal, as maximum;*

"2) *For illegal possession of firearm which is aggravated by homicide, he is sentenced to a penalty of death;*

"3) To pay the family of his victim P50,000.00 as indemnity and another P50,000.00 as moral damages; and

"4) To pay the cost.

"SO ORDERED."<sup>[6]</sup> (italics supplied)

On automatic review by this Court, appellant impugns solely his conviction for illegal possession of firearm for which he was sentenced to the supreme penalty of death.

Prefatorily, we stress that although the appellant himself does not refute the findings of the trial court regarding the homicide aspect of the case, the Court nevertheless made a thorough examination of the entire records of the case, including the appellant's conviction for homicide, based on the settled principle that an appeal in criminal cases opens the entire case for review. Our evaluation leads us to conclude that the trial court's ruling on the homicide aspect is clearly supported by the records. Thus, we shall concentrate on the appellant's lone assignment of error with respect to his conviction for the crime of illegal possession of firearm.

P.D. 1866, which codified the laws on illegal possession of firearms, was amended on June 6, 1997 by Republic Act 8294. Aside from lowering the penalty for said crime, R.A. 8294 also provided that *if homicide or murder is committed with the use of an unlicensed firearm, such use shall be considered as a special aggravating circumstance.*<sup>[7]</sup> This amendment has two (2) implications: *first*, the use of an unlicensed firearm in the commission of homicide or murder shall not be treated as a separate offense, but merely as a special aggravating circumstance; second, as only a single crime (homicide or murder with the aggravating circumstance of illegal possession of firearm) is committed under the law, only one penalty shall be imposed on the accused.<sup>[8]</sup>

Prescinding therefrom, and considering that the provisions of the amendatory law are favorable to herein appellant, the new law should be retroactively applied in the case at bar.<sup>[9]</sup> It was thus error for the trial court to convict the appellant of two (2) separate offenses, *i.e.*, Homicide and Illegal Possession of Firearms, and punish him separately for each crime. Based on the facts of the case, the crime for which the appellant may be charged is *homicide, aggravated by illegal possession of firearm*, the correct denomination for the crime, and *not illegal possession of firearm, aggravated by homicide* as ruled by the trial court, as it is the former offense which aggravates the crime of homicide under the amendatory law.

The appellant anchors his present appeal on the assertion that his conviction was unwarranted as no proof was adduced by the prosecution that he was not licensed to possess the subject firearm. In their Manifestation and Motion in lieu of Appellee's Brief, the Solicitor General joined cause with the appellant.<sup>[10]</sup>

We agree.

Two (2) requisites are necessary to establish illegal possession of firearms: *first*, the existence of the subject firearm, and *second*, the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution.<sup>[11]</sup>

The first element -- the existence of the firearm -- was indubitably established by the prosecution. Prosecution eyewitness Acaso saw appellant shoot the victim thrice