

## EN BANC

[ G.R. No. 130800, June 29, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GUILLERMO NEPOMUCENO, JR., ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE, JR., C.J.:**

Accused-appellant Guillermo Nepomuceno, Jr., (hereafter NEPOMUCENO) was charged before the Regional Trial Court of Manila with parricide in Criminal Case No. 94-136491 and with qualified illegal possession of firearm in Criminal Case No. 94-139839. The crime of parricide was alleged to have been committed with the use of an unlicensed firearm. The two cases were consolidated and assigned to Branch 46 of the said court. NEPOMUCENO entered a plea of not guilty in each case.

Despite the consolidation, Criminal Case No. 94-136491 was tried first. On 20 November 1996, judgment was rendered finding NEPOMUCENO guilty beyond reasonable doubt of the crime of parricide and sentencing him to suffer a prison term of forty years of *reclusion perpetua*. NEPOMUCENO appealed the judgment to us in G.R. No. 127818. In our decision of 11 November 1998, we affirmed the appealed judgment with the modification that the penalty imposed was changed from "forty years of *reclusion perpetua*" to *reclusion perpetua*.

Meanwhile, the trial court proceeded with the trial of Criminal Case No. 139839. The information in that case reads as follows:

That on or about May 2, 1994, in the City of Manila, Philippines, the said accused, being then a private individual not being authorized by law to possess firearm and ammunition, did then and there willfully and unlawfully keep, carry in his possession and under his custody and control one (1) cal. .38 revolver and one (1) piece of ammunition, without first obtaining the necessary permit or license to possess the same from the proper authorities, and which firearm, the said accused used in committing the crime of parricide against his legal wife, Grace B. Nepomuceno, to the damage and prejudice of the latter's heirs and/or public interest.

On 24 September 1997 judgment<sup>[1]</sup> was promulgated holding that all the elements of the crime of aggravated illegal possession of firearm were present, to wit: (1) there must be a firearm; (2) the gun was possessed by the accused; (3) the accused had no license from the government; and (4) homicide or murder was committed by the accused with the use of said firearm. It then applied our ruling in *People v. Quijada*<sup>[2]</sup> that the killing of a person with the use of an illegally possessed firearm gives rise to two separate offenses, namely, (1) homicide or murder under the Revised Penal Code and (2) illegal possession of firearm in its aggravated form.

Accordingly, the trial court convicted NEPOMUCENO of the violation of Section 1, paragraph 2, P.D. No. 1866, as amended by R.A. No. 8294, and sentenced him to suffer the penalty of death by lethal injection. The decretal portion of the decision reads:

WHEREFORE, the court finds the accused guilty beyond reasonable doubt of violating Presidential Decree No. 1866, Section 1, Paragraph 2, as amended by Republic Act No. 8294, and hereby sentences him to suffer the supreme penalty of death by lethal injection.

In the commission of the crime, the accused showed remorse by immediately bringing his wife to a hospital and voluntarily surrendering to the authorities. Article 10 of the Revised Penal Code, however, prohibits the application of the rules on the appreciation of mitigating and aggravating circumstances in the imposition of the penalty when the accused is charged [with] violating a special law.

However, the court recommends to the Chief Executive the grant of executive clemency to the accused by reducing the penalty to *prision correccional* in its maximum period and a fine of P15,000.00, the penalty imposed for illegal possession of firearms with only .380 firepower in its non-aggravated form.

IT IS SO ORDERED.

Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659,<sup>[3]</sup> the judgment and the record of the case were forwarded to this Court for automatic review.

Two Appellant's Brief were separately filed for NEPOMUCENO by *counsel de oficio* Domingo Palarca<sup>[4]</sup> and *counsel de oficio* Katrina Legarda Santos.<sup>[5]</sup> In the first, NEPOMUCENO asks for the reversal of the challenged decision because the trial court erred in convicting him on the basis of "evidence by inference" and in ruling that circumstantial evidence showed that the accused had *animus possidendi* of the unrecovered firearm. In the second Appellant's Brief, he asserts that this Court must allow the benefit of R.A. No. 8294 to take retroactive effect so as to acquit him of the crime of qualified illegal possession of firearm. In the alternative, he asks for acquittal because the trial court erred in finding that the prosecution proved an essential requisite of the offense, *i.e.*, the accused possessed the firearm without the requisite license or permit.

In its Manifestation in Lieu of Appellees' Brief, the Office of the Solicitor General asks for the reversal of the challenged decision and for the acquittal of NEPOMUCENO on these grounds: (1) the prosecution failed to prove that NEPOMUCENO had no authority or license to possess the firearm; and (2) pursuant to *People v. Bergante*,<sup>[6]</sup> which gave retroactive effect to R.A. No. 8294,<sup>[7]</sup> if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance and shall no longer be separately punished.

The information in Criminal Case No. 94-139839 alleged that the crime of illegal possession of firearm was committed on 2 May 1994, *i.e.*, before the approval of