

SPECIAL NINTH DIVISION

[CA-G.R. CR No. 35530, March 03, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMILIANO GUTIERREZ Y SUNGA, ACCUSED-APPELLANT.**

DECISION

PAREDES, J.:

THE CASE

THIS APPEAL, filed by accused-appellant Emiliano Gutierrez y Sunga (appellant), seeks to reverse and set aside the Judgment^[1] dated December 18, 2012 of the Regional Trial Court (RTC), Branch 52, Manila, in Criminal Case No. 08-259630, which found appellant guilty beyond reasonable doubt of violating Presidential Decree No. 1866^[2] (PD 1866), as amended by Republic Act No. 8294^[3] (RA 8294).

THE ANTECEDENTS

On February 22, 2008, an Information^[4] was filed charging appellant with violating PD 1866, as amended by RA 8294, as follows:

That on or about February 19, 2008, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one Smith & Wesson Magnum 22 caliber with Serial No. No. (sic) S.5654 with three (3) live ammunitions, without first securing the necessary license and/or permit therefor from the proper authorities.

Contrary to law.

At his arraignment, appellant entered^[5] a plea of "Not Guilty". During pre-trial^[6], appellant stipulated that he is the same person cited as the accused in the Information and that the court has jurisdiction over his person as well as the offense charged. Thereafter, trial proceeded.

FOR THE PROSECUTION

The prosecution presented the testimonies of PO1 Sherwin D. Yumu^[7] (PO1 Yumul), PO3 Edwin De Guzman^[8] (PO3 De Guzman), and SPO4 Marvin Vicente^[9] (SPO4 Vicente). Their testimonies stated, that:

On February 19, 2008, while at the España-Blumentritt Police Community Precinct (PCP) of the Sampaloc Police Station, SPO1 Nestor Cabatu (SPO1 Cabatu) received a call that there was an ongoing disturbance along Musa Street. Together with PO3 De Guzman and PO2 Clarmel Dimatulac, SPO1 Cabatu proceeded to Musa Street to

investigate. Upon reaching the place, they noticed a commotion during which they spotted appellant holding a gun in his right hand. After a short chase, the police officers apprehended appellant who surrendered the gun, a Smith & Wesson Magnum caliber 22 revolver^[10], with Serial No. S.5654, loaded with three (3) live ammunition^[11]. After explaining to him his rights, appellant was brought to the hospital for medical examination then to Police Station No. 4 where the case was turned over to PO1 Yumul. PO1 Yumul marked the firearm and ammunition, prepared the booking sheet and arrest report^[12], the affidavit of apprehension^[13], and the letter-referral^[14] to the City Prosecutor; after which, he brought appellant to the inquest prosecutor.

When SPO4 Vicente, a record verifier of the Firearms and Explosives Division-Philippine National Police (FED-PNP), after a record search, determined that appellant was not licensed to possess the gun recovered from him; he issued a Certification^[15] to that effect.

At the close of its case, the prosecution filed its Formal Offer^[16] of Evidence and all its exhibits were admitted in the Order^[17] dated August 4, 2009.

FOR THE DEFENSE

Appellant^[18] and Ryan Joseph Galvez^[19] testified for the defense. Their version is, as follows:

On February 19, 2008, at around 10:00 pm, appellant was having drinks with Tirso, Jeff and Egay, in front of Tirso's house along Musa Street, when a heated argument erupted between Jeff and Tirso. Appellant tried to pacify them by keeping Tirso away from Jeff when somebody shouted "*may pulis*". Startled by the shout, Tirso ran towards his house while appellant ran towards his own at the corner of Musa Street and Blumentritt. He was able to enter the garage but two police officers followed him. When he was told to come out of the garage, he did so with SPO1 Cabatu behind him. PO2 De Guzman was left at the door of the storage room. After a few minutes, PO3 De Guzman came out with the subject firearm and said, "Positive", to SPO1 Cabatu. Appellant was then handcuffed, informed of his rights, and then brought to the PCP. Appellant claimed that his father owned the gun though his father had no license for it.

Thereafter, the defense formally offered its single exhibit, which was admitted^[20].

After trial, the RTC issued the assailed Judgment^[21], the dispositive portion of which reads:

WHEREFORE, premised on the foregoing considerations, judgment is rendered finding accused **EMILIANO GUTIERREZ guilty beyond reasonable doubt** for violation of Section 1, Presidential Decree No. 1866, as amended by Republic Act No. 8294. Since the firearm recovered from said accused is considered high-powered in nature, he is hereby sentenced to suffer an indeterminate penalty ranging from six (6) years and one (1) day of *prision correccional* in its maximum period, as minimum, to eight (8) years of *prision mayor* in its minimum period, as

maximum, AND a fine of Thirty Thousand Pesos (30,000.00).

The .22 caliber magnum revolver and the three (3) live ammunition recovered from the accused are ordered confiscated in favor of the government. Thus, the Branch Clerk of Court, this Court, is ordered to turn over the said firearm and the three (3) live ammunition marked as Exhibits "D" and sub-markings to the Firearm and Explosives Division, Philippine National Police, Camp Crame, Quezon City, for proper disposition within fifteen (15) days from promulgation date.

SO ORDERED^[22]. (Emphasis in the original)

Hence this appeal^[23], appellant ascribing the following errors to the RTC, thus:

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHOSE GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

ASSUMING THAT THE ACCUSED IS GUILTY AS CHARGED, THE COURT A *QUO* GRAVELY ERRED IN FAILING TO APPLY THE INDETERMINATE SENTENCE LAW IN THE PENALTY IMPOSED UPON HIM^[24].

THE ISSUE

At the core of this appeal is the question - -whether or not appellant is guilty beyond reasonable doubt of illegal possession of firearm and ammunition under Section 1 of PD 1866, as amended by RA 8294.

THE COURT'S RULING

The appeal lacks merit.

Appellant argues^[25] that the prosecution failed to discharge its burden that appellant was in possession of the subject firearm at the time of his arrest. He points out^[26] supposed inconsistencies in the testimonies of the witnesses of the prosecution which should have cast doubt on the prosecution's version of events.

We are not convinced.

Illegal possession of firearms and ammunition is defined and penalized in Section 1 of PD 1866, as amended by RA 8294, as:

Sec. 1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. – The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

The penalty of prison mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

xxx

Thus, the elements of the crime, are: (a) the existence of the subject firearm; and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm. Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of 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^[27].

In the present case, the prosecution established beyond reasonable doubt the elements of the crime charged. As to the first element, the subject firearm and ammunition^[28] were presented before the court and properly identified^[29]. With respect to the second element, the negative fact that the appellant had no license or permit to own or possess the firearm and ammunition was established through the testimony^[30] of SPO4 Vicente, a representative of the FED-PNP, and the Certification³¹ he issued that the appellant has no license or permit to possess the subject firearm and ammunition.

On the other hand, appellant's possession of the loaded firearm at the time of his arrest was shown when PO3 De Guzman testified^[32] on to the circumstances surrounding the recovery of the subject firearm with ammunition. Well-settled is the rule in appellate review that the trial court's factual findings, such as its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings, are accorded great respect and have even conclusive effect^[33]. The reason for the rule is because the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. As such, appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case^[34]. In this case, we do not find any sufficient reason to disturb the findings of the RTC.

Moreover, the inconsistencies pointed out by the appellant in the testimonies of the witnesses of the prosecution with respect to whether the appellant was running