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FIRST DIVISION

[A.M. No. MTJ-96-1075. November 27, 2000]

PILAR VDA. DELA PEÑA, *complainant, vs.* **HON. JUDGE TIBURCIO V. EMPAYNADO, JR.,** *respondent.*

SYNOPSIS

Leoncio dela Peña died from a gunshot wound allegedly inflicted by Emmanuel Leabres. Separate complaints for homicide and violation of Presidential Decree No. 1866 (Illegal Possession of Firearms) were filed against Leabres before the Municipal Trial Court of Jaen, Nueva Ecija presided over by respondent Judge Tiburcio V. Empaynado, Jr. Respondent judge forwarded the complaint to the Office of the Provincial Prosecutor for preliminary investigation. Relative to this incident, Pilar dela Peña, filed a verified complaint with the Office of the Court Administrator which alleged that her husband, Leoncio dela Peña was killed by Emmanuel Leabres with the use of an unlicensed firearm. Despite the fact that the offense committed is punishable by death, the respondent judge allowed the accused to post bail in the amount of ₱50,000.00. The said amount was further reduced to ₱40,000.00 when the respondent judge granted the motion to reduce bail bond filed by the accused. Moreover, the respondent judge maliciously denied complainant's request to transfer the accused from the municipal jail of Jaen where he is being given special treatment to the provincial jail of Cabanatuan City. In his comment, respondent judge claimed that he did not deny the request to transfer the accused to the provincial jail as evidenced by his Order dated 21 July 1995. He further explained that the complaint filed against the accused is only for simple Illegal Possession of Firearms which is not punishable by death, hence a bailable offense. The Office of the Court Administrator recommended the dismissal of the complaint.

The Court ruled that respondent judge correctly pointed out that the complaint failed to allege the qualifying circumstance that the illegally possessed firearm was used in killing a person. It is well settled that the use of an

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unlicensed firearm in the commission of murder or homicide is a qualifying circumstance. Consequently, it must be specifically alleged in the information, otherwise, the accused cannot be sentenced to death for illegal possession of firearm in its aggravated form without violating his right to be informed of the nature and cause of the accusation against him. Following the rules, it cannot be correctly said that the accused in Criminal Case No. 30(95) is charged with the aggravated form of illegal possession of firearms, which is punishable by death, absent the express allegation of the pertinent qualifying circumstance. The offense charged is thus only for simple illegal possession of firearms which is punishable by *reclusion temporal* in its maximum period to *reclusion perpetua.* Consequently, no impropriety attended the conduct of respondent judge when he allowed accused to post bail in Criminal Case No. 30(95) after taking into consideration several attenuating factors in his favor.

The Court dismissed the charge of gross ignorance of law against respondent Judge.

SYLLABUS

1. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCE; USE OF UNLICENSED FIREARM; MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION, OTHERWISE, THE ACCUSED CANNOT BE SENTENCED TO DEATH. — It is well settled that the use of an unlicensed firearm in the commission of murder or homicide is a qualifying circumstance. Consequently, it must be specifically alleged in the information, otherwise the accused cannot be sentenced to death for illegal possession of firearm in its aggravated form without violating his right to be informed of the nature and cause of the accusation against him.

2. LEGAL AND JUDICIAL ETHICS; JUDGES; NO IMPROPRIETY ATTENDED THE CONDUCT OF JUDGE WHEN HE ALLOWED THE ACCUSED TO POST BAIL IN THE ILLEGAL POSSESSION OF FIREARMS. — [I]t cannot be correctly said that the accused in Criminal Case No. 30(95) is charged with the aggravated form of illegal possession of firearms, which is punishable by death, absent the express allegation of the pertinent qualifying circumstance. The

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offense charged is thus only for simple illegal possession of firearms which is punishable by *reclusion temporal* in its maximum period to *reclusion perpetua*. Consequently, no impropriety attended the conduct of respondent judge when he allowed accused to post bail in Criminal Case No. 30 (95) after taking into consideration several attenuating factors in his favor.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 8294; ILLEGAL POSSESSION OF FIREARMS IS SIMPLY TAKEN AS AN AGGRAVATING CIRCUMSTANCE IN MURDER OR HOMICIDE.** — As the law stands today, there can no longer be a separate conviction of the crime of illegal possession of firearms under P.D. No. 1866 in view of the amendments introduced by Republic Act No. 8294. Instead, illegal possession of firearms is simply taken as an aggravating circumstance in murder or homicide pursuant to Section 1 of R.A. No. 8294. Said provision of law reads in part: "If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance." Accordingly, all pending cases for illegal possession of firearms should be dismissed if they arose from the commission of other crimes indicated in R.A. 8294 (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted *coup d'etat* under Section 3).

RESOLUTION

KAPUNAN, *J.*:

In her verified complaint filed before the Office of the Court Administrator, Pilar Garcia Vda. de Dela Peña charged Judge Tiburcio V. Empaynado, Jr. of the Municipal Trial Court of Jaen, Nueva Ecija, with gross ignorance of the law.

The verified complaint, written entirely in Filipino, alleges as follows:

1. Na ako ang biyuda ni Leoncio dela Peña na binaril at napatay ni Emmanuel Leabres doon sa San Pablo, Jaen, Nueva Ecija;

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2. Na nais kong ipagharap ng kasong administratibo si Hukom Tiburcio V. Empaynado, Jr. ng Jaen Municipal Trial Court, Jaen, Nueva Ecija bunga ng KAWALANG ALAM SA BATAS (Gross Ignorance) at malisyosong pagtanggi na ilipat sa Provincial Jail ang akusadong si EMMANUEL LEABRES;

3. Na si Emmanuel Leabres ay nahulihan ng isang paltik at walang lisensiyang baril na kalibre .38, may markang Smith & Wesson at Serial No. 155 kasama ang apat na bala at dalawang basyo ng kalibre .38 noong Hunyo 15, 1995 sa San Pablo, Jaen, Nueva Ecija. Ginamit ni Emmanuel Leabres ang naturang baril sa pagpatay sa aking asawa na si Leoncio dela Peña. Kalakip nito bilang Annex "A" ang sipi ng Criminal Complaint sa Kasong Kriminal Bilang 30 (95) na may titulong People of the Philippines versus Emmanuel Leabres;

4. Na sa kabila na ang parusa sa illegal possession of firearm and ammunitions ay kamatayan kung ginamit sa pagpatay ang walang lisensiyang baril (paragraph 2 Sec. 1 of Presidential Decree No. 1866) kusa at may masamang loob na itinakda ni Hukom Tiburcio V. Empaynado ang piyansa ni Emmanuel Leabres sa bailbond na ₱50,000.00. Kalakip nito bilang Annex "B" ang Order ni Hukom Empaynado na may petsang Hulyo 5, 1995;

5. Na pinayagan pang babaan ni Hukom Tiburcio V. Empaynado mula sa ₱50,000.00 hanggang ₱40,000.00 ang piyansa para sa pansamantalang paglaya ni Emmanuel Leabres, kalakip nito bilang "Annex C" ang Motion To Reduce Bail Bond na walang petsa na isiginawa ni Emmanuel Leabres na pinagbigyan naman ni Hukom Tiburcio V. Empaynado;

6. Na sa kabila ng mahigpit na kahilingan namin na ilipat mula sa Jaen, Municipal Jail na binibigyan ng special treatment si Emmanuel Leabres tungo sa Nueva Ecija Provincial Jail, Cabanatuan City ay malisyosong tumanggi si Hukom Empaynado na ilipat si Leabres hanggang ngayon (Hulyo 26, 1995), gayong natapos na niya ang preliminary investigations sa Illegal Possession of Firearm noong Hulyo 5, 1995 at Homicide noong Hulyo 10, 1995. Kalakip nito bilang Annex "D" ang Order ni Hukom Empaynado sa kasong Kriminal Bilang 33 (95).[1]

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[1] *Rollo*, Vol. I, p. 4.

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Complainant's husband, Leoncio Dela Peña, died from a gunshot wound allegedly inflicted by Emmanuel Leabres. Two criminal complaints were filed against the accused in connection with the said incident. Criminal Case No. 33(95) for Homicide and Criminal Case No. 30(95) for Violation of Presidential Decree No. 1866 (Illegal Possession of Firearms). Respondent judge forwarded the criminal complaint in Criminal Case No. 33(95) to the assistant provincial prosecutor for the conduct of preliminary investigation.

The present complaint of Mrs. Dela Peña stemmed from the acts of Judge Empaynado (respondent judge) in connection with the preliminary investigation in Criminal Case No. 30(95). According to Mrs. Dela Peña, respondent judge acted in gross ignorance of the law when, despite the fact that the penalty of death is imposable for the crime of illegal possession of firearm where the firearm was used in killing a person, he (respondent judge) allowed the accused in that case to be provisionally released on bail of ₱50,000.00. Moreover, upon the motion of the accused, respondent judge reduced the bail to ₱40,000.00. Mrs. Dela Peña further alleges that respondent judge maliciously denied the request to transfer the accused from the municipal jail of Jaen, where he is being given special treatment, to the provincial jail.

Upon the instance of the Deputy Court Administrator Bernardo P. Abesamis, respondent judge filed his comment on the verified complaint. The essential points of the comment, which was likewise written in Filipino, are as follows:

1. The charge that he maliciously denied the request to transfer the accused from the Municipal to the Provincial Jail is belied by the Order, dated 21 July 1995, where he expressly directed the Clerk of Court to "make arrangement with the Chief of Police of Jaen, Nueva Ecija, for the immediate transfer to the Provincial Jail at Cabanatuan City of the accused;"

2. The complaint filed against the accused in Criminal Case No. 30(95) is only for simple Illegal Possession of Firearm which is punishable by *reclusion temporal* in its maximum period to *reclusion perpetua*, not death as claimed by complainant.

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3. Accused cannot be held liable for illegal possession in its aggravated form, *i.e.*, homicide or murder committed with the use of an illegally possessed firearm, which entail the penalty of death, because the complaint filed against him did not specifically allege the fact of killing with the use of the illegally possessed firearm;

4. The bail was reduced from ₱50,000.00 to ₱40,000.00 after taking into consideration the fact that simple illegal possession of firearm is a bailable offense and that accused voluntarily surrendered to the authorities and that he has no prior criminal record.[2]

Complainant thereafter submitted her reply to the comment of respondent judge. She claims that the Order, dated 21 July 1995, issued by respondent judge is antedated. She allegedly requested to see the entire records of the case on 26 July 1995 and there was no such order therein. She maintains that the crime committed by accused in Criminal Case No. 30(95) was punishable by death, thus, respondent judge acted in gross ignorance of the law when he allowed the accused to post bail.[3]

In his rejoinder to complainant's reply, respondent judge refuted the charge that he antedated the order of 21 July 1995 by submitting the sworn affidavits of the clerk of court and court stenographer affirming that no irregularity attended the issuance of said order. Contrary to the allegation of complainant, respondent judge maintains that he acted promptly on the request to transfer accused to the provincial jail. He reiterates that the crime charged against accused in Criminal Case No. 30(95) is only for simple illegal possession of firearm since the qualifying circumstance of the use of said firearm in killing a person was not specifically alleged in the complaint. As such, he did not commit any irregularity when he allowed accused to post bail as the crime charged is a bailable offense.[4]

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[2] *Id.*, pp. 10-13.

[3] *Id.*, pp. 32-34.

[4] *Id.*, pp. 52-58.

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The Court, in its Resolution of 7 February 1996, referred the case to Judge Johnson Ballutay, Executive Judge of Regional Trial Court, Cabanatuan City, for investigation, report and recommendation. Judge Ballutay conducted hearings on the matter. Thereafter, he submitted his report with the following recommendation:

> From the foregoing, it is very clear that the respondent was aware that the unlicensed firearm was used in the killing which is the subject matter of the Homicide case and being aware of that, then he should have been duty bound to follow the law on the matter and for his failure to do so, then it is recommended that a fine of FIVE THOUSAND PESOS (₱5,000.00) be imposed upon him with a stern warning that a repetition of the same will be dealt with more severely.[5]

Upon his evaluation of the said report, however, the Deputy Court Administrator took a different stand. In his memorandum, the Deputy Court Administrator recommended to the Court to dismiss the complaint as it was shown that "there is nothing irregular in his (respondent judge's) handling of the case."[6]

The crucial issue that needs to be addressed in this case is whether respondent judge acted in gross ignorance of the law when he allowed the accused to post bail in Criminal Case No. 30(95). We agree with the Deputy Court Administrator that respondent judge acted properly.

A perusal of the criminal complaint filed in Criminal Case No. 30(95) shows that the offense charged therein was for simple illegal possession of firearm. The complaint charged accused therein thus:

> That on or about 5:30 on the afternoon of Thursday, 15th day of June 1995, at Barangay San Pablo, Municipality of Jaen, Province of Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above named accused did then and there willfully, unlawfully, feloniously have in his possession and control an unlicensed firearm, a revolver cal. 38 (homade [sic] *paltik*) with marked Smith & Wesson with Serial Number 155 and with four (4) live

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[5] *Id.*, p. 145.

[6] *Rollo*, Vol. II, p. 2.

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ammunitions and two (2) spent shells, in violation of PD 1866 (Illegal Possession of Firearms and Ammunitions).

Contrary to law.[7]

Respondent judge correctly pointed out that the above complaint failed to allege the qualifying circumstance that the illegally possessed firearm was used in killing a person. It is well settled that the use of an unlicensed firearm in the commission of murder or homicide is a qualifying circumstance. Consequently, it must be specifically alleged in the information, otherwise the accused cannot be sentenced to death for illegal possession of firearm in its aggravated form without violating his right to be informed of the nature and cause of the accusation against him.[8] Following this rule, it cannot be correctly said that the accused in Criminal Case No. 30(95) is charged with the aggravated form of illegal possession of firearms, which is punishable by death, absent the express allegation of the pertinent qualifying circumstance. The offense charged is thus only for simple illegal possession of firearms which is punishable by *reclusion temporal* in its maximum period to *reclusion perpetua*.[9] Consequently, no impropriety attended the conduct of respondent judge when he allowed accused to post bail in Criminal Case No. 30 (95) after taking into consideration several attenuating factors in his favor.

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[7] Note 1 at 5.

[8] *People vs. Evangelista*, 256 SCRA 611, 626 (1996); *People vs. Fernandez*, 239 SCRA 174 (1994); *People vs. Barte*, 230 SCRA 401 (1994).

[9] Section 1 of Presidential Decree No. 1866 reads:

Sec. 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.* — The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

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It is significant to note at this point that, as the law stands today, there can no longer be a separate conviction of the crime of illegal possession of firearms under P.D. No. 1866 in view of the amendments introduced by Republic Act No. 8294.[10] Instead, illegal possession of firearms is simply taken as an aggravating circumstance in murder or homicide pursuant to Section 1 of R.A. No. 8294.[11] Said provision of law reads in part:

> If homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

Accordingly, all pending cases for illegal possession of firearms should be dismissed if they arose from the commission of other crimes indicated in RA. 8294 (murder or homicide under Section 1, and rebellion, insurrection, sedition or attempted *coup d'état* under Section 3).[12]

WHEREFORE, premises considered, the Court RESOLVES to adopt the recommendation of Deputy Court Administrator Bernardo P. Abesamis *DISMISSING* the charge of gross ignorance of law against Judge Tiburcio Empaynado, Jr. in connection with Criminal Case No. 30(95) for lack of merit.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.*, concur.

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[10] Republic Act No. 8294 took effect on 6 July 1997, fifteen (15) days after its publication on 21 June 1997.

[11] *People vs. Valdez*, 304 SCRA 611, 630 (1999) citing *People vs. Molina*, 292 SCRA 742 (1998) and *People vs. Feloteo*, 290 SCRA 627 (1998).

[12] *Ibid.*