

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO L. DOINOG AND SAMUEL L. CORTEZ, ACCUSED.

*G.R. No. 122840. May 31, 2000*

Ponente: MENDOZA, J.

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### MENDOZA, J.:

This case is here on appeal from the decision[1] of the Regional Trial Court, Branch 147, Makati, finding accused-appellant Francisco L. Doinog and his co-accused Samuel L. Cortez guilty of violation of P.D. No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974) and sentencing them to suffer the penalty of reclusion perpetua and ordering them to pay the heirs of the victim, SPO2 Ricardo Bautista, the amount of P50,000.00, plus costs.

The information for Highway Robbery, filed on October 4, 1993 against both accused, reads:

The undersigned 4th Assistant Prosecutor accuses FRANCISCO DOINOG y LADRERO and SAMUEL CORTEZ y LOPEZ of the crime of Violation of P.D. 532 (Highway Robbery), committed as follows:

That on or about the 19th day of September, 1993, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Nene Lavadia, alias Dodo, alias Randy and John Doe whose true identities and present whereabouts are still unknown and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously take, divest and carry away cash money amounting to P1,000.00 more or less from Leonora S. Bañaga a bus conductress and cash money and valuables from passengers namely, Ismael Pontillas y Ladrero, Susan Pineda y Bautista and Jaime Doria y Molina in an undetermined amount, while aboard a passenger bus which was travelling along Magallanes, Bgy. Bangkal, Makati, Metro Manila, which is a Philippine Highway as defined by P.D. 532, to the damage and prejudice of said Leonora S. Bañaga and the aforementioned passengers in an undetermined amount; that on the occasion of the said robbery and in order to insure the commission of the said offense, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, with deliberate intent to kill and without justifiable cause, did then and there wilfully, unlawfully and feloniously shoot and stab one SPO2 Ricardo Bautista, thereby inflicting upon him gunshot and stab wounds on the vital parts of his body which caused his death; and that as a further consequence thereof, physical injuries were inflicted upon the passengers namely Ismael Pontillas y Ladrero, Susan Pineda y Bautista and Jaime Doria y Molina.

CONTRARY TO LAW.[2]

Another information for illegal possession of firearms in violation of P.D. No. 1866 was filed on the same day against accused-appellant, Francisco L. Doinog, alleging --

The undersigned 4th Assistant Prosecutor accuses FRANCISCO DOINOG y LADRERO of the crime of Illegal Possession of Firearm and Ammunitions (P.D. No. 1866) committed as follows:

That on or about the 19th day of September, 1993, in the Municipality of Makati, Metro Manila, Philippines, a

place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously have in his possession, direct custody and control and carry outside of his residence a cal. 38 paltik with Serial No. 282550 with four (4) live bullets, which is in violation of the above-cited law.

CONTRARY TO LAW.[3]

Upon arraignment, both accused pleaded "not guilty" to the charges against them.[4] After arraignment, accused Samuel Cortez escaped from the Makati municipal jail and, to this date, has remained at large. The trial proceeded as to accused-appellant alone.

The facts are as follows:

At around 1:30 in the afternoon of September 19, 1993, an air-conditioned bus of the Prince Transport was held-up as it reached the Magallanes fly-over in Bangkal, Makati, along Epifanio de los Santos Avenue. Five (5) armed men stood up from their seats in different parts of the bus and announced the hold-up. One of the men seated beside the driver pulled out a fan knife and poked it at the latter. Another robber took about P1,000.00 from the bus conductor while the others divested the passengers of their cash and valuables. A commotion ensued when one of the robbers fired a gun. When the driver stopped the bus, the robbers and passengers alighted, leaving only the bus driver, the bus conductor and an injured passenger, SPO2 Ricardo Bautista. SPO2 Bautista was later taken to the Villamor Air Base Hospital where he was pronounced dead on arrival. The autopsy report (Exh. E)[5] showed that he suffered gunshot and stab wounds which led to his death.

Accused-appellant apparently was also aboard the bus and was hit during the gun fire. He was taken to the Villamor Air Base Hospital for treatment of a gunshot wound on the left thigh. While he was being given first aid treatment at hospital, Sgt. Rogelio Bibat confiscated a .38 caliber firearm allegedly lying on a bed beside accused-appellant's. Accused-appellant was transferred first to the Philippine General Hospital and then to the Ospital ng Makati and, afterward, placed under arrest and detained in the Makati Municipal Jail.

On May 31, 1995, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court, finding accused Francisco Doinog and Samuel Cortez guilty beyond reasonable doubt of the crime charged in the "Information" in Criminal Case No. 93-8496, hereby sentences them to suffer reclusion perpetua, and to indemnify the heirs of SPO2 Ricardo Bautista of the sum of P50,000.00. With costs.

In Criminal Case No. 93-8497, the Court hereby acquits accused Francisco Doinog for insufficiency of evidence.[6]

Hence, this appeal. Accused-appellant assigns the following errors:

I. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE DEFENDANT-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 93-8496 FOR INSUFFICIENCY OF EVIDENCE ON THE PART OF THE PROSECUTION.

II. THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE PRESENTED BY THE DEFENSE WHICH INCLUDES THE NEGATIVE FINDINGS OF NBI FORENSIC CHEMIST MARY ANN ARANAS ON THE PARAFFIN TEST CONDUCTED ON BOTH HANDS OF THE DEFENDANT-APPELLANT.

III. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE DEFENDANT-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 93-8496 DUE TO REASONABLE DOUBT.

Accused-appellant contends that the prosecution evidence consists mainly of testimonies of unreliable witnesses; that the evidence in fact shows that he was the a victim of trumped-up charges; and that the trial court failed to give due consideration to the report of the National Bureau of Investigation (NBI) that when he was tested for powder (nitrate) burns he was found negative.[7]

The Office of the Solicitor General (OSG), on the other hand, relies on the rule that the trial court's determination of the credibility of witnesses could no longer be disturbed on appeal. The OSG claims that the inconsistencies in the testimonies of the prosecution's witnesses are on minor details and do not affect their reliability.[8]

This Court generally accords respect to the factual findings of the trial court judge, considering that the latter has the opportunity to directly observe the witnesses and determine by their demeanor on the stand the probative value of their testimonies.[9] There are exceptions to this rule, however, such as, where the record shows that facts and circumstances of weight and influence have been overlooked, misunderstood or misapplied by the trial court which, if considered, would have affected the result of the case, or when such findings are arbitrary.[10]

This is such a case. Here, the trial court based its finding of guilt primarily on the testimony of the supposed eyewitness, Jaime Doria, who testified thus:[11]

Q On September 19, 1993, at about 1:00 o'clock in the afternoon, do you recall where were you?

A Yes, sir.

Q Where were you at that time?

A I was aboard a bus.

Q Can you still recall what bus you were riding in at that time?

A Prince Transport.

Q And you were then board for what direction?

A I am proceeding to Bicutan.

Q While as you said you were then on board the said bus, do you recall of any unusual incident that took place?

A Yes, sir.

Q What was that incident?

A There was a hold-up that took place.

Q You said there was a hold-up that took place do you know who that hold-upper was at that time?

A I could not recognize if he is present in Court.

Q Will you please look around inside the courtroom and pinpoint to the hold-upper as you said you saw on that date September 19, 1993?

A Yes, sir. He is inside the courtroom.

Q Please do pinpoint to him?

A Yes, Sir. (Witness pointing to a person who when asked his name answered by the name of Francisco D[on]inog.)

Q Mr. Witness, at that time when the hold-up as you said took place, in what particular place at the bus you were then situated?

A At the middle, sir.

Q What about the accused when you first notice him, where was he at that time?

A Near the driver.

Q What was he doing at that time, if any?

A When we were proceeding to Magallanes, he pulled out a fan knife.

Q You said "siya", to whom are you referring to?

A That hold-upper, sir.

Q And when the accused pulled out a fan knife what transpired next?

A I heard gunshots, sir.

Q Were you able to know from where the gunshots came from?

A I could not recall. But what I heard is that somebody pulled out a gun. During that time there was already a commotion.

Q Do you know who is that somebody pulled out a gun?

ATTY. TIRAD:

Misleading, your Honor. The witness testified that the person pulled out a fan knife ...

FISCAL:

I will reform the question. Do you know who is this person as you said who pulled out a gun?

A What I could recall is that somebody announced a hold-up.

Q In relation to the place where you said you were then s[eat]ed, where was the man who as you said drew a gun?

A At my right side, Sir.

Q What about the three other companions, where were they s[eat]ed at that time?

A Somebody poked at the driver.

Q And who was that somebody who poked at the driver?

A His companion, sir.

Q While the same person the one who poked a knife against the driver, where was then D[o]inog if you can still recall at that time?

A He was near the door of the bus.

Q What was he doing at that time?

A He got the watches and other valuable things of the passengers.

Q And what happened to you, if any?

A My watch and my wallet were taken from me.

Q What kind of watch is that?

A Seiko.

Q What about the money?

A P200.00, sir.

Q As you said they were divesting the passengers of their properties, what happened next, if any?

A When we learned of a hold-up, all of us alighted from the bus.

Q You said you heard gunshots?

A Yes, Sir.

Q How many gunshots?

A Two, sir.

Q Were you able to find out what happened after the gunshots were fired?

A I noticed that someone died, sir.

Q And did you come to know who died?

A A policeman, sir.

Q What was the name of the policeman, if you can still recall?

A Ricardo Bautista. I read from the newspaper that he is Ricardo Bautista.

Q And you said after the incident, you and the other passengers alighted from the bus?

A Yes, sir.

Q What did you do after that?

A I rode another vehicle and proceeded to Bicutan.

Q Do you recall having investigated by the police officers in connection with this case?

ATTY. TIRAD:

No basis, your Honor. The witness never testified that he has gone to . . .

FISCAL:

I will reform the question. After you heard gunshots I withdraw that. After you have learned that certain policeman as you said was killed on that very occasion, what did you do next, if any?

A I tried to find out where they lived, sir.

Q What did you do?

A I talked to them and told them that I would help them.

Q You said kinausap ko sila, to whom are you referring to?

A The wife of Ricardo Bautista.

Q Who is this Ricardo Bautista, Mr. Witness?

A The policeman.

Q And what happened next, if any, after you have informed the wife of the policeman who died?

A I told her if they needed my help, she just approached me and I will help them.

Q And you, the wife of the policeman who died during the incident talked with each other. Do you recall where were you then s[eat]ed?

A At their house.

Q What did she tell you, if any?

A She was not able to tell me anything because she was still in the state of shock.

Q On September 25, 1993, do you recall where were you, Mr. Witness?

A Yes, sir.

Q Where were you at that time?

A I was in Taguig, sir.

Q Where in Taguig, in particular?

A At the headquarters.

Q And what were you going there if you can still recall?

A When I read from the newspaper about the hold-up in that place, I proceeded to the police station.

Q And as you said you were there at the police station in Taguig, what happened while you were there?

A I tried to find out who were the hold-uppers that were arrested.

Q And what did you find out, if any?

A When I went to the police headquarters of Taguig, I tried to see the hold-upper whom the policeman caught and try to find out if the hold-uppers of that incident were also there.

Q What did you discover, if any?

A I discovered that one of them was one of the hold-upper.

Q And as you said one of them, to whom are you referring to?

A The witness is pointing to the accused, Francisco D[o]inog.

Q While you were there at the headquarters of Taguig, do you recall having been investigated by the police?

A Yes, sir.

Q Was that reduced into writing?

A Yes, sir.

Q If that statement is shown to you would you be able to recognize the same?

A Yes, sir.

Q I am showing to you Mr. Witness, a statement of one Jaime Doria, will you please go over the same and tell the Honorable Court what relation has this statement to the statement that you have stated in connection with this case?

A This is the same, sir. This is the same sworn statement that I executed.

....

FISCAL:

Under your present oath, can you still affirm and confirm the truthfulness of what is stated in this affidavit?

A Yes, sir.

FISCAL:

No further question, your Honor.

COURT:

Cross-examination.

ATTY. TIRAD:

With the permission of this Honorable Court.

COURT:

You may proceed.

ATTY. TIRAD:

Q Mr. Witness, you just testified that you proceeded to the Taguig Headquarters after you have read the newspaper regarding the arrest of the hold-uppers on the incident of September 19, 1993, is that correct?

A Yes, sir.

Q And while at the Taguig Police Station, you were able to identify one of the hold-uppers, is that correct?

A Yes, sir.

Q And when you were able to identify this hold-upper, this identification of the hold-upper was not included in this sinumpaang salaysay executed before the Taguig Police Station?

A No, sir.

Q Is it not a fact that everything that took place while you were at the Taguig Police Station were reduced into writing?

A Yes, sir.

Q And this is the document or the Sinumpaang Salaysay which was executed at that time that you were at the Taguig Police station?

A Yes, sir.

Q And you affirmed the contents of all these sinumpaang salaysay?

A Yes, sir.

Q And you affirmed that it was Francisco D[o]inog whom you were able to identify while you were at the Taguig Police Station?

A I learned that Francisco D[o]inog was one of the hold-uppers who hit the policeman.

Q You came to know of the person of Francisco D[o]inog thru the papers only?

A No, sir. When I alighted from the bus I looked at him.

Q I am showing to you this Sinumpaang Salaysay which you have just affirmed a while ago, I will draw your attention in page rather in par. 7, and I quote: "T: - Sa loob ng opisang ito maari bang igala mo and iyong paningin, at pagkatapos ay sabihin mo sa akin kung mayroon kang nakikilala? S - Mayroon po, yon po, yan po yong tumutok ng balisong sa driver ng bus (Affiant pointing to one Samuel Cortez y Lopez) inside intelligence division office. Do you recall this paragraph, Mr. Witness?

A Yes, sir.

Q Is it not true that you have just stated that you were able to identify Francisco D[o]inog at the Police Station of Taguig?

A I came to know Francisco D[o]inog thru the newspaper. But at the police station it was his companion.

Q So, Mr. Witness, it was only now that you were able to identify and point to Francisco D[o]inog as one of the holdupper?

A I could not recall his face.

Q Is it only now that you came to identify Francisco D[o]inog as one of the hold-uppers?

A It is only now that I saw him. But I can recognize his face.

Q You are now changing your previous testimony taken on direct. You were only able to identify Francisco D[o]inog while you were at the Police Station of Taguig, is it not?

A I saw him.

Q Just answer my question.

A I did not recognize him there.

Q After the incident or after the alleged hold-up, you took another vehicle and proceeded to Bicutan, is that correct?

A Yes, sir.

Q And it never came to you that you should report the matter to the police station?

Q After the incident or after the alleged hold-up, you took another vehicle and proceeded to Bicutan, is that correct?

A Yes, Sir.

Q And it never came to you that you should report the matter .....to the police station?

A No, Ma'am. It never came to my mind because it was just an incident, it never came to my mind to report the matter to the police because I lost only few items.

Q Mr. Witness, you testified in the direct-examination that you were s[ea]ted at the middle of the bus at that time of the incident?

A Yes, Sir.

Q I am showing to you this Sinumpaang Salaysay and call your attention particularly to par. 12, (please see par. 12).

Do you recall having stated this, Mr. Witness?

A Yes, Sir.

Q So, you are now changing what you have stated in the direct-examination that you were s[ea]ted at the middle of the bus at that time that the alleged hold-up took place?

A No, Sir.

Q You are now adopting what you have stated in that sinumpaang salaysay executed on Sept. 25, 1993 that at the time of the hold-up, the alleged hold-up, that you were s[ea]ted in front of the bus and that the alleged hold-upper was s[ea]ted besides the driver?

A Yes, Sir.

Q So, it is not true. You have stated in the direct-examination that at the time of the hold-up, you were s[ea]ted in the middle of the bus, and the alleged hold-upper was besides the driver?

FISCAL:

Objection, your Honor. There were five hold-uppers, and the question was . . .

COURT:

Answer.

ATTY. TIRAD:

Which is which?

A I was behind the driver.

Q Mr. Witness, you testified that while you were on board the bus on Sept. 19, 1993, you were sitting from one place to another?

A Yes, Sir.

Q And for how many times were you been transferring from one place to another?

A Two times, Sir.

Q And the reason why you were transferring from one place to another is just you were feeling uncomfortable at that time?

A Yes, Sir.

Q Mr. Witness, is that your usual manner when you ride in a bus that you are transferring from one place to another?

A Yes, Sir.

Q And at that time, Mr. Witness, when you were transferring from one place to another, the direction of your eyes were not fix at one place?

A No, Sir.

Q As a matter of fact, your eyes were looking around inside the bus at that time that you were transferring from one place to another?

A Yes, Sir.

Q Were you the only person who was doing that thing looking around the bus at that time?

A No, Sir.

Q Why? Who were the other persons who were also looking around during that time?

A The five holduppers.

Q You are now saying before this Honorable Court that in addition to the five holduppers you were also doing the same thing that the holduppers were doing?

FISCAL:

That will be immaterial, your Honor.

ATTY. TIRAD:

It is very material, your Honor. It is just a follow up question, your Honor, to the last answer of the witness.

COURT: Witness may answer.

A Yes, sir.

ATTY. TIRAD:

Q At that time that you were looking around the bus you already know in particular that there were five (5) holduppers inside the bus at that time?

A Not yet, Sir.

Q When was the time that you came to know that there were five holduppers?

A When somebody shouted the holdup.

Q When you heard that, what did you do?

A First we were s[eat]ed and they were standing at that time.

Q How about you, did you stand, Mr. Witness, at that time?

A You could not stand immediately, because you were surprised.

Q When you heard gunshots, what was your reaction?

A We stoop down.

Q But you said that after the incident, you alighted from the bus?

A When I saw somebody alighted, we immediately follow up them.

Q Did you not remain at the bus before you alighted?

A No, Sir.

Q The five holduppers were with you or they were left from the bus?

A They alighted first.

Q And then you followed?

A All of us alighted because we saw somebody fell.

Q Mr. Witness, you testified that you saw Francisco Doinog pulled out a knife and poked at the driver?

A Yes, Sir.

Q And you are sure of that?

A Yes, Sir.

Q So, you are not changing what you have stated in your sinumpaang salaysay under par. 12?

A No, Sir.

Q Mr. Witness, while you were at Taguig Police Station, do you remember having been asked what really transpired during the incident on Sept. 19, 1993 and you have given this answer . . . (please see par. 12) do you remember having said that before the Taguig Police Station?

A Yes, Sir.

Q So, earlier, Mr. Witness, you testified that you saw Francisco Doinog pulled out a knife and poked at the driver, is that correct?

A Yes, Sir.

Q So, you are now adopting two testimonies, Mr. Witness, that you saw Samuel Cortes pulled out a knife while sitting besides you and poked at the driver?

A There were two holduppers who poked a knife at the driver.

Q But you did not state that in your sinumpaang salaysay which was executed on September 25, 1993, how many days after the incident of September 19, 1993, that there were two who pulled out a knife, Mr. Witness?

A No, Sir.

Q So, you are now saying that there were two who poked a knife at the driver, who pulled out a knife and poked at the driver?

A Because I can recall.

Q Just answer the question.

A Yes, Sir.

Q On September 25, 1993, you failed to recall such incident?

A I can remember, Sir.

....

We have quoted in extenso the testimony of the principal witness to show the extent of contradictory statements made by him and how he kept on changing his answers in an apparent attempt to inject consistency in his account of the events. While it may be true that, as the trial court noted, Jaime Doria was not shown to have ill-motive or bias in testifying against accused-appellant, the inconsistencies in his testimony are so glaring and material that they cast doubt on his credibility.

Thus, on direct examination, Jaime Doria claimed that he was seated in the "middle of the bus" while accused-appellant was seated near the driver. However, on cross-examination, he testified that what he said in his affidavit (Exh. F)[12] executed before the police, i.e., that he was seated in front, behind the driver, was the accurate statement. He tried to explain that he kept moving from seat to seat during the ride because he was "uncomfortable." But why he thus felt he did not say. Nor did he explain why he was looking around at the other passengers inside the bus, as did the five robbers. If this were true, then his actions were unnatural, if not altogether suspicious.

Likewise, during direct examination, the witness stated that it was one of accused-appellant's companions who poked a knife at the bus driver, while accused-appellant stood "near the door" of the bus. Upon examination by the defense counsel, however, he said that initially it was accused-appellant who poked a knife at the driver. When his inconsistency was pointed out to him, Jaime Doria changed his answer and claimed that there were two men who held a knife against the driver.

It also appears that the witness cannot clearly recall whether gun shots were fired by robbers seated at the left and right sides, or at the front and back portions of the bus. Initially, he stated that the man seated to his right pulled a gun when the hold-up was announced. Upon questioning by the Court, however, he testified that he heard gun shots coming from the "front and at the back" of the bus. It is noteworthy that nowhere in his testimony did this witness claim he saw any of the robbers in front carrying a gun. Even from his confusing statements, it appears that the two robbers in front, who were within his vantage point, were carrying bladed weapons, not guns.

But the most serious discrepancy in Jaime Doria's testimony relates to his supposed positive identification of accused-appellant as one of the robbers. In his affidavit (Exh. F), there was no mention of accused-appellant's name, much less his identification as one of the assailants. It was accused Samuel Cortez whom he identified thus:

T Sa loob ng opisnang ito maari bang igala mo ang iyong paningin, at pagkatapos ay sabihin mo sa akin kung mayroon kang nakikilala?

S Mayroon po, yon po, yan po yong isa sa homoldap sa amin sa Bus na sinasakyan ko, yan po yong tumutok ng Balisong sa driver ng Bus (Affiant pointing to One Samuel Cortez y Lopez) inside the intelligence division Office.[13]

On direct examination, Doria claimed that accused-appellant was one of robbers he saw and identified at the Taguig police station. When cross-examined by defense counsel, however, Doria admitted that he "did not recognize [accused-appellant] at the police station" and knew him/his face only from the newspapers. Even upon additional direct and cross-examination, the witness was not able to clarify the matter and left his testimony further confused, viz.:

COURT:

Where did you board the bus?

A At Cubao, your Honor.

Q Were there already passengers inside the bus when you went up the bus?

A There were only few.

Q You mentioned about five holduppers, where did they board the bus?

A They were already inside the bus when I boarded.

Q And they were standing?

A They were standing and some were sitting down.

Q Despite of the fact that the bus was not yet full pack?

A The bus was already full.

Q Before the holduppers announced the holdup, were all passengers s[eat]ed?

A Yes, sir.

Q And when they announced the holdup the five of them stood up?

A Yes, Sir.

Q Who announced the holdup the one besides you or the one in front?

A The one in front.

Q Francisco Doinog?

A Yes, your Honor.

Q What did he say when he announced the holdup?

A He told the passengers not to move because this is a holdup.

Q Was he already holding a knife?

A Yes, Sir.

Q As he announced the holdup, did he poke a knife at the driver?

A Yes, Sir.

Q How about this policeman who died in that incident, where was he s[eat]ed?

A At the back, your Honor.

Q The shots which you heard, where did they came from?

A Both sides.

Q What do you mean both sides? Left and right?

A In front and at the back.

Q So, you heard a shot in front and you heard another shot behind the bus?

A Yes, Sir.

Q Where was the commotion, outside the bus or inside the bus?

A Inside the bus.

Q What did the driver do, did he stop the bus?

A Yes, Sir.

Q And the passengers went down?

A Yes, Sir.

Q How was the holdupper able to get the watches and valuables of the passengers?

A Tinutukan din po kami.

Q While you were still s[eat]ed at that time?

You mean all the five holduppers divested valuable things from the passengers?

A Yes, Sir.[14]

If indeed Jaime Doria saw and identified accused-appellant during the robbery and again while the latter was supposedly detained at the Taguig police station, there is no reason why he did not say so in his affidavit executed before the police investigators. In the end, the witness had to admit that he did not see accused-appellant at the Taguig police station.

ATTY. TIRAD:

Q Mr. Witness, you testified you heard Francisco Doinog that it was Francisco Doinog who announced a holdup and then after poked a gun. It is only now, Mr. Witness that you are testifying that Francisco Doinog announced holdup and pulled a knife, is that correct?

A Yes, sir.

Q Why you did not state that on September 25, 1993 when your sinumpaang salaysay was executed?

A No need, sir.

ATTY. TIRAD:

That will be all, your Honor.

FISCAL:

Re-direct, your Honor.

COURT:

Proceed.

FISCAL:

Q Why did you not state that in your statement given at the police station?

A Because Francisco Doinog was not at the Taguig Police Station.

FISCAL:

No further question, your Honor.[15]

We cannot understand how the trial court could rely on Jaime Doria's testimony, given these blatant discrepancies therein. In *People v. Ragay*, [16] we held:

It is settled that no undue importance should be given to a sworn statement or an affidavit as a piece of evidence because, being taken ex-parte, an affidavit is almost always incomplete and often inaccurate. But, it is equally settled that when there is an omission in an affidavit concerning a very important detail, the omission can affect the affiant's credibility.

Rules of evidence are laid down for the determination of truth, and the trial court cannot abdicate its duty by hiding behind general rules without scrutinizing the evidence before it.

Second. According to prosecution witness Sgt. Rogelio Bibat, he confiscated a .38 caliber paltik revolver from accused-appellant while the latter was being treated at the Villamor Air Base Hospital.[17] Sgt. Bibat admitted he did not really know if the gun belonged to accused-appellant. He testified:

COURT:

Q Who told you that the gun belongs to the accused Francisco Doinog?

A The concerned citizens who brought the victim and the suspect to the hospital, your Honor.

Q Were these concerned citizens who told you that the gun belongs to Francisco Doinog inside that room where the accused was being treated?

A The one who actually seen the commission of the crime, the robbery, your Honor.

...

ATTY. TIRAD:

Q Mr. Witness, so it was the concerned citizens who told you that the .38 caliber gun belongs to the accused Francisco Doinog?

A Yes, ma'am.

Q It was also these concerned citizens who told you that Francisco Doinog was the one who committed the robbery, is that correct?

A Yes, ma'am.

Q Did you ask the names of these concerned citizens?

A The driver, conductress and one of the passengers who is unhurt at that time.

Q Did these persons execute any affidavit to that effect?

A I do not know.

Q At that time, Mr. Witness you never asked the accused what can he say about the .38 caliber gun?

A Never, ma'am.

Q So you just relied on what these concern citizens told you, Mr. Witness?

A Yes, ma'am.

Q And based on their testimony you executed a sworn statement, is that correct?

A Yes, ma'am.[18]

On the other hand, the driver and the conductor of the bus executed sworn statements[19] in which they said they did not recognize the robbers. The bus driver, Llardo Dinagub stated in his statement:

0.6 T Nakita mo ba na may nakuhang mga alahas o pera o ano mang bagay sa mga pasahero mo?

S Hindi ko napansin sa dahilan ang aking iniintindi ay aking pagmamaneho.

0.7 T Natatandaan mo ba kung saan mo sila naisakay?

S Hindi po.

0.8 T Nakita mo ba kung sino ang bumaril sa napatay na Pulis?

S Hindi po, sa dahilan ang attention ko ay nasa aking pagmamaneho.

Leonora Bañaga, the bus conductor, likewise stated:

06 T Nakikilala mo ba ang kumuha ng iyong collection?

S Hindi ko po matatandaan.

07 T Kung mahuli ang ibang mga holdaper naituturo mo ba kung sino sa kanila ang kumuha ng collection mo?

S Di po.

SPO2 Martin Pataueg, who made the investigation report on the incident and to whom Sgt. Bibat turned over the .38 caliber paltik revolver, testified that accused-appellant admitted to him that the gun was his (accused-appellant's). This assertion, however, was not even included in the investigation report. More importantly, if this were true, it was made by accused-appellant without assistance of counsel and, thus, cannot be the basis of any finding of guilt.

COURT:

Q Did you not investigate the accused Francisco Doinog?

A As a matter of fact I asked and talked with the accused as to who are his companions and he made mention of his companions, these four (4) who were allegedly residing somewhere in Valenzuela. As a matter of fact the group of follow-up led by me was immediately dispatched to Valenzuela in order to effect the arrest of the accused but we were not able to because we cannot find the accused in that place, your Honor.

Q Did you ask the accused if [he owned] the gun which was turned-over to you by Sgt. Bibat?

A He made mention that he really holds that gun, that the gun was taken from him, your Honor.

Q The accused Francisco Doinog?

A Yes, your Honor.

Q He told you that the gun was taken from him?

A Yes, your Honor.

Q Did you also ask Francisco Doinog if he fired the gun?

A I asked him but he told me that he did not fire the gun that is why I cause his personality be examined by forensic. He was examined by the N.B.I. to determine the powder burns, your Honor.

Q Was there already a report of the N.B.I. of the gun powder burn?

A I cannot recall at this very moment, your Honor, I do not know whether that was the same result of the N.B.I. sent to me it is in my record, your Honor, probably I will try to find out whether that was the same result of the forensic.

COURT:

That will do.

ATTY. TIRAD:

Additional cross, your Honor.

COURT:

Alright.

CROSS EXAMINATION

BY ATTY. TIRAD: (Add'l.)

ATTY. TIRAD:

Q Mr. Witness, you said that the accused made mention that the gun was taken from him, was the accused Francisco Doinog assisted by a lawyer at the time when he told you that the gun was taken from him?

A There was none, [it was] just a matter of an informal inquiry.

Q Did you include that in your investigation report?

A I cannot recall, I will try to scan again for purposes of recalling it, I did not made mention.

Q So, it was not reflected in your investigation report that the accused told you that the gun was taken from his possession?

A Yes, ma'am. It was not reflected in the investigation report.

Q It is only now that you are saying that the accused Francisco Doinog told you that that gun was taken from his possession?

A That was the exact words that he made mentioned to me.[20]

In any event, the supposed eyewitness, Jaime Doria, testified that accused-appellant carried a knife, not a gun, while the paraffin test conducted on accused-appellant showed he was negative for gunpowder burns.[21]

For the foregoing reasons, we are constrained to set aside the conviction of accused-appellant and to acquit him. As held in *People v. Crispin*: [22]

Settled is the rule that conviction should rest on the strength of the evidence of the prosecution and not on the weakness of the defense. The identity of the offender, like the crime itself, must be proved beyond reasonable doubt. Even though accused-appellant invokes the inherently weak defense of alibi, such defense nonetheless acquires commensurate strength in the instant case where no positive and proper identification has been made by the prosecution witnesses of the offender, as the prosecution still has the onus probandi in establishing the guilt of the accused. The weakness of the defense does not relieve it of this responsibility.

WHEREFORE, the decision of the Regional Trial Court, Branch 147, Makati, is hereby REVERSED and accused-appellant Francisco Doinog is ACQUITTED on the ground of reasonable doubt.

The Director of Prisons is hereby directed to forthwith cause the release of accused-appellant unless the latter is being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

**SO ORDERED.**

Bellosillo, (Chairman), and Buena, JJ., concur.

Quisumbing, and De Leon, Jr., JJ., on leave.

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[1] Per Judge Teofilo L. Guadiz, Jr.

[2] Records, p. 2.

- [3] Id., p. 20.
- [4] Id., p. 34.
- [5] Id., p. 195.
- [6] Decision, p. 6; Rollo, p. 29.
- [7] Brief for Accused-Appellant, pp. 9-18; Rollo, pp. 57-66.
- [8] Brief for Plaintiff-Appellee, pp. 12-14; Rollo, pp. 117-119.
- [9] E.g., *People v. Lapay*, 298 SCRA 62 (1998)
- [10] *People v. Castillo*, G.R. No. 130188, April 27, 2000; *People v. Balamban*, 264 SCRA 619 (1996)
- [11] TSN, pp. 2-12, May 17, 1994. (Emphasis added)
- [12] Sinumpaang Salaysay, p. 1; Records, p. 196.
- [13] Id.
- [14] TSN, pp. 12-13, May 17, 1994.
- [15] Id., p. 15.
- [16] 277 SCRA 106, 126-127 (1997)
- [17] TSN, pp. 3-5, March 17, 1994.
- [18] Id., pp. 12-14.
- [19] Records, pp. 18-19.
- [20] TSN, pp. 12-14, March 22, 1994.
- [21] Exh. 2; TSN (*Mary Ann Aranas*), pp. 2-6, March 7, 1995.
- [22] G.R. No. 128360, March 2, 2000. See also *People v. Fronda*, G.R. No. 130602, March 15, 2000.

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