

## **PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO PINEDA Y MANALO, CELSO SISON Y LLOREN (AT LARGE), VICTOR EMMANUEL GONZALES COLET ALIAS “VICTOR COLET” (ACQUITTED), TOTIE JACOB A...**

*G.R. No. 141644. May 27, 2004*

Ponente: CARPIO, J.

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### **CARPIO, J.:**

#### **The Case**

On automatic review is the Decision[1] dated 21 January 2000 of the Regional Trial Court of Caloocan City, Branch 127, National Capital Judicial Region (“trial court”) in Criminal Case No. C-53860 (98). The trial court found appellant Rolando Pineda (“appellant”) guilty of robbery with homicide, attended by the aggravating circumstance of commission by a band. The trial court sentenced appellant to suffer the death penalty and to pay the legal heirs of the victim SPO1 Arnel Fuensalida (“Fuensalida”) civil indemnity and damages.

#### **The Charge**

The Information[2] charged appellant, along with Celso Sison y Lloren[3] (“Sison”), Victor Emmanuel Colet (“Colet”), Totie Jacob (“Jacob”), John Doe and Peter Doe, with the crime of Highway Robbery resulting in Homicide, as follows:

That on or about the 15th day of October 1997, in Caloocan City, Metro Manila, the above-named accused, conspiring, confederating and helping each other, with intent to gain and posing as passengers of an AIRCONDITIONED BUS “DREAMLINE AIRCON BUS” then cruising along Quirino Highway, Malaria, Caloocan City with more or less sixty (60) passengers, said accused by means of violence and intimidation upon all passengers as well as the bus driver and conductor, did then and there willfully, unlawfully and feloniously stage a HOLD-UP by pulling out their respective firearms and poke the same against everybody especially against the bus driver and conductor and they started to take and rob cash and personal belongings of all and on the occasion of said robbery in order to instill more fear among passengers, said accused in pursuit of their conspiracy, did then and there willfully, unlawfully and feloniously with intent to kill shot in different parts of his body one SPO1 ARNEL FUENSALIDA Y INCINARES, PNP, who as a consequence of the wounds died shortly thereafter to the damage and prejudice of all passengers, bus driver, conductor and the family of deceased SPO1 Arnel Fuensalida y Incinares.

CONTRARY TO LAW.[4]

The police arrested appellant on 5 September 1998 and detained him on 8 September 1998 in the Caloocan City Jail for other criminal cases. The police arrested appellant for Criminal Case Nos. 54650 and 54651[5] before Branch 131 of the Regional Trial Court of Caloocan City.[6]

#### **Arraignment and Plea**

Appellant pleaded not guilty on his arraignment on 24 May 1999. After appellant had rested his case, the police

arrested Colet. Colet pleaded not guilty during his arraignment on 27 September 1999. When the trial court rendered its decision, the other accused remained at large.

## The Trial

### The Version of the Prosecution

The prosecution presented six witnesses: (1) the victim's wife Amalia Fuensalida; (2) bus driver Camilo Ferrer ("Ferrer"); (3) conductor Jimmy Ramos ("Ramos"); (4) PO3 Napoleon Andaya; (5) PO3 Celerino Susano; and (6) Philippine National Police ("PNP") Medico Legal Officer Dr. Ma. Cristina Freyra.

The trial court summarized the prosecution's evidence thus:

At around 7:00 p.m. of 15 October 1997 while bus driver Camilo Ferrer (Ferrer for short) was driving his assigned passenger bus, the "Dreamline Aircon Bus" bearing Plate No. PWZ-208 with around fifty (50) passengers on board and heading for Tungko, San Jose del Monte, Bulacan, accused Rolando Pineda (Accused Pineda for short) and his five (5) companions boarded the bus along Quirino Highway near Lagro. Thence after the bus conductor Jimmy Ramos (Ramos for short) had collected the passenger's individual fares, he posted himself at the front door of the bus when suddenly accused Pineda who was seated behind Ramos rose from his seat, prompting Ramos to turn his head and look at Pineda. Forthwith the latter held driver Ferrer by the neck while poking a gun at his nape and shouted to his companion: "TOTIE, IKUHA MO AKO NG SAPATOS DIYAN PARA MAUMPISAHAN NA ANG LARO," and then announced a hold-up. While Ferrer was looking at accused Pineda through the rear-view mirror in front of the driver's seat, Pineda warned the former, "AYUSIN MO ANG PAGMAMANEHO KUNG AYAW MONG MAMATAY" with additional warning to maintain the same speed as the vehicles preceding them. Thence accused Pineda instructed his companions to close all the windows and bus curtains and commanded the passengers to bow down their heads. Irrked by Ferrer's act of stepping on the brake too often accused Pineda pressed the gun on his nape telling him "PUTANG INA MO KUNG GUSTO MONG MABUHAY AYUSIN MO ANG PAGMAMANEHO MO" and then followed by another instruction to his cohorts: "SAMSAMIN NINYO LAHAT ANG MASASAMSAM NINYO DIYAN" or words of similar import. At this juncture, Ramos, who was at a distance of one-half (1/2) meter from accused Pineda was ordered by the latter to surrender to him his collections which out of fear he readily obeyed by handing over to Pineda the day's earnings of P5,700. It was at that point while Ramos was giving the money to Pineda when he took a glance at the left side of Pineda's face. Thence while his cohorts were divesting the passengers of their cash and valuables accused Pineda was continuously poking his gun at Ferrer's neck and would press it harder whenever he stepped on the brake. Thence after Ferrer was divested by the robbers of his wallet containing his driver's license and cash in the amount of P1,000 which incidentally he borrowed earlier from a loan shark in EDSA and while the bus was somewhere in Malaria, Caloocan City, a commotion ensued inside the bus when one passenger later identified as Victim SPO1 Arnel Fuensalida grappled with one of the hold-uppers for the possession of his clutch bag containing his service firearm. In the course thereof the concerned malefactor shouted: "BOSS INAGAW ANG BARIL KO" prompting accused Pineda to shout back "TIRAHIN NA, PATAYIN NA, PAG LUMABAN, PATAYIN NA." Immediately thereafter and while the bus was in Pangarap Village, Caloocan City, six (6) shots rang out. Apparently fearing that the gunfire would catch the attention of the highway patrol, accused Pineda commanded his cohorts to check through the window if any patrol car was following them and uttered: "HUWAG KAYONG MAGPAPAPUTOK." Not long afterwards accused Pineda remarked: "MALAPIT NA TAYO" and again ordered Ferrer: "DIRETSO MO LANG." As directed, Ferrer kept on driving until accused Pineda ordered him to stop the bus upon reaching Sampaguita Street, Caloocan City where all the malefactors alighted with their loot including victim Fuensalida's service firearm i.e. a caliber .38 Smith and Wesson revolver bearing Serial No. 47840. Thereafter the passengers started crying and some even lost consciousness. As suggested by one passenger, they all alighted at the Tungko Police Station, San Jose del Monte, Bulacan where a lady passenger screamed: "PATAY NA, PATAY NA," referring to the victim whose body was lying face down on the bus flooring. However for lack of jurisdiction the police

officers thereat referred Ferrer, Ramos and the crying lady to Malaria Police Station, Caloocan City. The police officers after looking at the victim's cadaver and conducting an initial investigation referred them to the Urduja Police Station. At the Urduja Police Station, police investigators PO3 Celerino Susano and SPO1 Ernesto Mandanas of the Investigation Section were dispatched to Malaria, Caloocan City where subject bus bearing Plate No. PWZ-208 and body no. 2657 was found parked in front of the Kababayan Center. An ocular inspection of the bus disclosed the lifeless body of victim lying facedown on the flooring. Recovered inside the bus were two (2) slugs (Exhs. "I" and "I-1") and two (2) empty shells (Exhs. "J" and "J-1"). Thereafter the body was brought to El Ruaro Funeral Parlor where the same was subsequently identified by victim's widow Mrs. Amalia Fuensalida. Meanwhile the police investigators took down on the same day the sworn statements of Ferrer (Exh. "E") and Ramos ("Exh. "H" with submarkings "H-1" and "H-2") as well as that of the private complainant Amalia Fuensalida (Private Complainant for short) (Exh. "B" with submarking "B-1").

It came to pass that P/Supt. Benjamin Cabiltes, Chief of Urduja Police Sub-Station 4, Camarin Road, Caloocan City assigned the team of SPO1 Carlito Alas, PO3 Napoleon Andaya, Sgt. De Guzman and other operatives of the Special Operations Group to conduct follow-up investigation of the case. Initially the team repaired to the police station in San Jose del Monte, Bulacan where the bus was first brought and based from [sic] information furnished by an unidentified bus passenger to the effect that the robber called for one "Totie" in the course of the robbery, an inquiry was accordingly made as to whether they know persons by that name to which the San Jose del Monte police identified the man as Totie Jacob, a member of the gang of accused Rolando Pineda who with another companion named Celso Sison was said to be detained at the Municipal Jail of San Jose del Monte, Bulacan for another case of robbery. Proceeding to the said place the team found out that the duo were already out on bail. Thence, after the pictures of accused Pineda (Exh. "B") and Sison (Exh. "C") from the file of said Municipal Jail were shown by the Team to Ferrer, the latter positively identified the duo as two of the six (6) malefactors involved in the robbery with homicide in question (Karagdagang Salaysay dated 6 Nov. 1997 – Exh. "E-1").

With the above findings together with the sworn statements of witnesses and the Joint Affidavits of SPO1 Carlito Alas and PO3 Napoleon Andaya (Exh. "D" with submarkings "D-1" and "D-2"), as well as Affidavit of PO3 Celerino Susano (Exh. "F" with submarkings "F-1" and "F-2"), and other pertinent documents such as the Death Certificate of victim (Exh. "P" with submarkings "P-1" and "P-2"), the case against accused Rolando Pineda, Celso Sison, Victor Colet, Totie Jacob, and two "Does," "John" and "Peter," were referred to the Office of the City Prosecutor, Caloocan City for appropriate action by P/Supt. Cabiltes per referral slip dated 10 November 1997 (Exh. "G" with submarking "G-1") which resulted in the filing of instant charge against the aforementioned accused after a preliminary investigation conducted by Asst. City Prosecutor Sancho G. Lomadilla.

Per the record, the cadaver of the victim was autopsied on 16 October 1997 by Medico Legal Officer Dr. Ma. Cristina Freyra of the PNP Crime Laboratory Services, EDSA, Kamuning, Quezon City, per Request for Laboratory Examination of the Caloocan City Police Station (Exh. "K") and the Certification of Identification and Consent for Autopsy (Exh. "L") signed by the Private Complainant. Dr. Freyra's findings was [sic] embodied in her Medico Legal Report No. M-1509-97 (Exh. "M" with submarkings "M-1," "M-2" and "M-3") with its annexes, i.e. sketches of Human Head and Body (Exh. "N" with submarkings "N-1" to "N-4" and Exh. "O" with submarkings "O-1" and "O-2," respectively), which disclosed the following findings and conclusion:

**"FINDINGS:**

Fairly nourished, fairly developed, male cadaver in rigor mortis with post mortem lividity at the dependent portions of the body. The conjunctiva are pale. The lips and nailbeds are cyanotic.

**"HEAD, TRUNK, EXTREMITY:**

(1)

Gunshot wound, left parietal region, measuring 0.8 x 0.7 cm just left of the midsagittal line, 167.5 cm from the heel, with an abraded collar measuring 0.1 cm uniformly, directed posteriorwards, downwards and medialwards, fracturing the left parietal and left sphenoid bone, lacerating both left cerebral hemisphere, with subdural and subarachnoidal hemorrhages. A deformed slug recovered embedded at the left sphenoid bone.

(2) Gunshot wound, left post auricular region, measuring 0.8 x 0.7 cm, 11 cm from the posterior midline, 156.5 cm from the heel, with an abraded collar measuring 0.1 cm uniformly, directed anteriorwards, downwards and medialwards, fracturing left temporal and left sphenoid bone, lacerating the left cerebral hemisphere, with subdural and subarachnoidal hemorrhages. A deformed slug recovered embedded at the left sphenoid bone.

(3) Contusion, left supraorbital region, measuring 4 x 3 cm, 4 cm from the anterior midline.

(4) Abrasion, right cheek, measuring 8 x 3 cm, 9 cm from the anterior midline.

(5)

Gunshot wound, thru and thru, point of entry, right submanibular region measuring 0.8 x 0.7 cm, 7 cm from the anterior midline, 146 cm from the heel, with an abraded collar, measuring 0.1 cm uniformly, an area of smudging measuring 4.5 x 2, 2.5 cm, 146 cm from the heel, directed posteriorwards, upwards and to the left fracturing the left mandible, lacerating the larynx, making a point of exit at the left preauricular region, measuring 1.5 x 1 cm, 14 cm from the anterior midline, 154 cm from the heel.

(6)

Gunshot wound thru and thru, point of entry, epigastric region, measuring 0.8 x 0.7 cm, 2 cm left of the anterior midline, 115 cm from the heel with an abraded collar, measuring 0.1 cm uniformly, directed posteriorwards, downwards and lateralwards, passing thru the 4th left intercostal space, lacerating the left dome of the diaphragm, stomach and the spleen, making a point of exit at the left posterior costal region, measuring 1.5 x 1.2 cm, 10 cm from the posterior midline, 109 cm from the heel.

(7)

Gunshot wound, thru and thru, point of entry, vertebral region, measuring 0.8 x 0.7 cm, just left of the posterior midline, 122 cm from the heel, with an abraded collar, measuring 0.2 cm inferiorly, 0.1 cm superiorly, medially and laterally, directed anteriorwards, upwards and lateralwards, fracturing the 9th left thoracic rib, lacerating both lobes of the left lung, making a point of exit at the left anterior axillary region, measuring 1.5 x 1.2 cm, 14 cm from the anterior midline, 126 cm from the heel.

(8)

Gunshot wound, right shoulder, measuring 0.9 x 0.7 cm, 4 cm from the posterior midline, 144 cm from the heel, with an abraded collar, measuring 0.5 cm laterally, 0.2 cm superiorly, 0.1 cm inferiorly and medially, directed anteriorwards, downwards and lateralwards. A deformed slug recovered embedded thereat.

There is about 800 cc of blood in the abdominal cavity.

The stomach is  $\frac{1}{4}$  full of partially digested food particles, negative for alcoholic odor.

The rest of the visceral organs are grossly unremarkable.

“CONCLUSION:

Cause of death is hemorrhage secondary to multiple gunshot wounds, head and trunk.”

Elucidating on her medical findings, Dr. Freyra testified that she found six (6) gunshot wounds in the victim's body, one abrasion and one contusion. Gunshot wounds designated in the Medico Legal report as Nos. 1, 2, 5, 6 and 7 were fatal; that judging from the nature of the wounds, wherein the six (6) gunshots had the same

points of entries all measuring 0.8 x 0.7 cm, the fatal weapon was possibly a .38 cal. revolver; however, she could not form any opinion as to the number of assailant[s]; that the contusion on the left eye was brought about by the blood in the head owing to several fractures in the skull while the abrasion could have been brought about by the rubbing of the affected area with a rough surface. On the relative position of the victim with the assailant/s it is possible that when gunshot wounds nos. 1, 2 and 6 were inflicted, the assailant was somewhere at the extreme left of the victim who could be in a lying or sitting position or at a lower level than the assailant with the muzzle of the gun pointed downward. Gunshot wound no. 5 was inflicted at close range. Gunshot wound no. 7 which was located at victim's back could have been sustained while victim was in any of the three aforesaid positions as nos. 1, 2 and 6 while the trajectory of gunshot wound no. 8 was also going downward toward the lateral side of the body.

Dr. Freyra went on to add that some of the gunshot wounds had points of entries and exits while others did not have any exit wound thus this explains her extraction of the deformed slugs (Exhs. "Q-1," "Q-2" and "Q-3") from the victim's body and the recovery of police of slugs at the crime scene.

On the hearing of 16 July 1999 the Defense Counsel agreed to stipulate that the private complainant incurred the total amount of P60,000 representing the funeral and other related expenses for the deceased.

Testifying on the civil aspect of the case the private complainant alleged that as Senior Police Officer I, victim was receiving the monthly salary of P9,277.50; that as a result of the death of her husband she suffered mental block, wounded feelings and sleepless nights and was very sad thinking of what would be in store for their three small children.[7]

#### The Version of the Defense

The defense presented four witnesses: (1) appellant; (2) his contractor Lillian Tan ("Tan"); (3) his acquaintance Efren Quiton ("Quiton"); and (4) his co-accused Colet. The trial court summarized appellant's bid for an acquittal in this wise:

On that day of 15 October 1997 from 8:00 a.m. to 5:00 p.m., accused was in the house of one VICTOR "INTING" VILLENA in Gumamela St., Malaria, Tala, Caloocan City where he installed the electrical wiring per contract with contractor LILLIAN TAN. He never left his said place of work on that particular day and as a matter of fact LILLIAN TAN even served him lunch and snacks in the morning and afternoon. After finishing his work he was paid P500 by his contractor and at 5:00 p.m. he went home which is only one hundred meters away or a five minutes [sic] walk from VICTOR VILLENA'S house. Upon arriving home he rested for 5 minutes then took a bath and at around 6:00 p.m. he went to the nearby house of his contractor LILLIAN TAN where he talked with her and drunk [sic] some beer until 9:00 p.m. when he went home and ate dinner then retired to bed at around 10:00 p.m.; that he does not know anything about the shooting incident in question; that his house in Gumamela St., Malaria, Tala, Caloocan City is about 30 to 45 minutes ride to or from Lagro, Quezon City and a distance of around 4 to 5 kilometers to Quirino Highway, Malaria, this City where according to prosecution witnesses CAMILO FERRER and JIMMY RAMOS the shooting incident in question occurred; that he had no previous encounter or quarrel with these FERRER and RAMOS and did not know them prior to the incident; and that he saw for the first time police investigator PO3 CELERINO SUSANO in court; that [the] instant charge against him was fabricated as he was just implicated by his co-accused VICTOR COLET, who is a brother of a policeman, and CELSO SISON @ BOYET TARTARO, an asset of the police which arose from the rivalry over a woman he had with CELSO SISON who is a good friend of VICTOR COLET; that the duo who managed to elude arrest, were heard to say that he would rot in jail; that CELSO SISON was also instrumental for [sic] his arrest by SPO2 ABRAHAM FERNANDEZ and SPO1 LEOPOLDO DAVID for alleged violation of P.D. 1866 filed with the Municipal Trial Court of San Jose del Monte, Bulacan which was however subsequently dismissed after he posted the required bailbond on 5 August 1999 (Exh. "1"); that his picture shown by the Caloocan City Police to the witnesses in the instant case must have been secured by them from the Court's file; that he was again framed-up by the police on 15 November 1999 when

he was arrested by elements of the Caloocan City Police Station, Sub-Station 6, Bagong Silang for allegedly concealing a deadly weapon and assault which was referred for inquest by Sub-Station Commander Capt. VALDEZ to Inquest Prosecutor ACUÑA who however ordered his release as no evidence was confiscated from his person, thus, he was released from detention on 18 November 1997; that his alleged involvement in the instant case which occurred on 15 October 1997 was not even brought up by the Sub-Station 6 operatives during his custodial investigation before Prosecutor ACUÑA; that in furtherance of the police efforts to file trump-up [sic] charge against him the Caloocan City Police Station, Sub-Station 6, Bagong Silang implicated him for alleged Violation of P.D. 1866 and Robbery which allegedly happened on 5 September 1997 despite the fact that he was detained as early as 5 August 1998 [sic] at the Caloocan City Jail and ironically this resulted in the filing of two Informations in Criminal Case Nos. 54650 and 54651, respectively, against him now pending before RTC Branch 131, this City (Exhs. “2” and “3” with submarkings “2-A” and “3-A”, respectively); that while in jail he met fellow inmate EFREN QUITON from Bulacan who expressed surprise on why he was implicated in the instant case as he claimed to know what really happened and the persons really involved in this case and volunteered to testify for him in Court.

On 1 September 1999, the Defense Counsel recalled Accused PINEDA (TSN – 1 September 1999) to the witness stand who testified that he remembered an event which occurred on 15 August 1997 when he figured in a rumble and the unnamed male person who was seriously wounded as a result of his punches turned out to be the nephew of police officer TITO ALAS who was the one who arrested him in connection with instant case and whose house was a distance of around 300 meters away from his house; that subsequently his sister informed him that after he stepped out of the house, police officer TITO ALAS came looking for him and had he found him then he could have been killed.

The defense presented Miss LILLIAN TAN who corroborated the alibi defense of the Accused, further professing lack of knowledge about the incident in question and maintained that except that of a contractor-worker relationship, no other relation exist [sic] between her and Accused PINEDA.

The other defense witness EFREN QUITON corroborated the testimony of the Accused relative to his getting acquainted with him at the City Jail and his knowledge about the offense for which he (accused) was being implicated. He testified in this wise:

He (EFREN QUITON) was a resident of Grotto, San Jose del Monte, Bulacan prior to his detention and is detained at the Caloocan City Jail on charge of illegal possession of shabu during pot session which occurred on 10 June 1999; that while thus under detention he came to know his fellow inmate ROLANDO PINEDA and on “10 June 1996” (p. 3, TSN of 31 August 1999 – QUITON) the latter intimated to him about his (Accused’s) case to which he expressed surprise considering that sometime on 16 October 1997, SPO4 MARIO LARENAS approached him inquiring on whether he saw BOYET TARTARO, VICTOR COLET and one TITO who were said to be the suspects in the bus hold-up incident wherein one policeman was killed and that the name of the Accused PINEDA was never mentioned as among those he suspected; that he knows very well this BOYET TARTARO, a police aide, who used to handle the traffic at the crossroad of Tungkong Mangga, San Jose del Monte and a certain COLET because both were often seen together. While SPO4 LARENAS had mentioned to him that the incident for which the aforementioned trio were the suspects [in the robbery with homicide case that] happened in Caloocan City, however, no mention was made to him with reference to its date of occurrence.

As records have it, after the defense was deemed to have rested its case following the admission of its formal offer of evidence, a “Motion To Reopen Trial” was filed on 17 September 1999 by Defense Counsel, for the purpose of admitting newly discovered evidence brought about by the arrest of accused VICTOR EMMANUEL COLET who was committed to the BJMP Caloocan City on 10 September 1999 in connection with another case involving Violation of Section 16, Art. III, R.A. 6425. Aforecited Motion was given due course by this Court in its Order of 24 September 1999 and the case was thus set anew for the reception of Accused PINEDA’s additional evidence which consists solely of the testimony of co-accused COLET to

corroborate his (Accused PINEDA's) defense of alibi. In the course of Accused COLET's testimony he gave his true name as VICTOR EMMANUEL GONZALES COLET hence upon motion of the Trial Prosecutor, the Information was accordingly amended to reflect his alleged true name.

As synthesized by the Court the following were Accused COLET's declarations:

He, Accused VICTOR EMMANUEL GONZALES COLET, aka "PINOCCHIO" x x x is a resident of 686 Quirino Highway, Bankers' Village II, this City which is one-half to one kilometer away from accused PINEDA's place at Barracks II, Bukid Area, District I, this City. The first time he saw Accused Pineda was in 1996 in Bukid Area and subsequently he used to see him passed-by [sic] the house of the woman he (Accused COLET) was courting in Barracks II.

On that fateful day at about 7:15 p.m. of 15 October 1997, Accused COLET boarded subject air-conditioned bus in Lagro, Quezon City purposely to go home and had himself seated at the bus' right side, third seat from the last. At that juncture he noted the presence of CELSO SISON, SPENCER and TOTIE JACOB inside the bus. When the bus was approaching Grotto, Guandanoville Subdivision, between Amparo and Pangarap Village, this City Accused TOTIE JACOB, a neighbor of his in Bankers' Village II, who was armed with a handgun then seated on the first seat, right side of the bus, suddenly stood up and declared a hold-up shouting: "WALANG KIKILOS, HOLDAP ITO, HOLDAP ITO, PARE UMPISAHAN NA NATIN." Simultaneously, TOTIE's companion who was holding a grenade, stood up and ordered the passengers to bow down by saying: "YUMUKO KAYONG LAHAT." And while the passengers bowed down their heads, TOTIE's four (4) other companions who were all armed, started divesting the passengers of their cash and valuables which the passengers dropped in a black duffel bag upon instruction of the hold-uppers. Accused COLET claimed that his co-accused PINEDA was neither a passenger of the bus, nor one of the six hold-uppers and that he did not see PINEDA at anytime on that evening of 15 October 1997.

On cross-examination, COLET explained that while stooping down, he managed to peep surreptitiously and saw ROBERTO SISON @ BOYET TARTARO @ CELSO SISON shooting the policeman victim who was then in seating position with his .38 caliber handgun; that it was SPENCER then sporting a barber's cut at the sides with curly and wavy hair on top, who was pointing his gun at the driver; that the hold-uppers were armed as follows: CELSO SISON @ BOYET TARTARO aka ROBERTO SISON, a .38 gun; "BAROK," a knife; EDISON PALMARIO, a hand grenade; SPENCER, a .38 caliber handgun; TOTIE JACOB, a .45 caliber handgun; and the sixth unidentified robber, a knife. Accused COLET is familiar with TOTIE JACOB since he used to hear the latter's name in 1994, it was this TOTIE JACOB whom he (Accused COLET) saw divesting the bus conductor of his money; that he used to see EDISON PALMARIO at Phase I, Pangarap Village, this City, whenever he went around their place on board his scooter. In 1976, he used to see alias BAROK, a jeepney "barker," while he was yet a student at the Novaliches Elementary School. Prior to his arrest, he was jobless since he was the one taking care of his father who suffered a stroke. In 1997, he was a volunteer confidential agent of the San Jose del Monte Police. He received no salary therefor except certain personal doleout from Major TINIO. He was arrested in 8 September 1999 for illegal possession of shabu and he learned that he was implicated in this case three days after his detention at the City Jail and on the following day he learned that PINEDA is one of his co-accused.

Accused COLET further stated that although he was one of the passengers of the bus, nothing was taken from him as not all passengers were victims of robbery; that soon after he alighted at Pleasant Hill he immediately contacted and reported the incident to SPO1 TITO ALAS of Sub-Station 4, Bukid Area, this City telling him that they could still catch up with the hold-uppers since they just alighted at Sampaguita St., Malaria Caloocan City and SPO1 ALAS gave words [sic] that he would take care of the matter. The latter also asked him if he knew PINEDA who was once detained at the San Jose del Monte Jail to which he answered in the affirmative. He assured SPO1 ALAS that he will testify in this case once the suspects are apprehended.[8]

## Ruling of the Trial Court

The trial court ruled that contrary to the offense designated in the information, the proper charge against appellant is robbery with homicide under Article 294 of the Revised Penal Code[9] and not highway robbery resulting in homicide under P.D. No. 532. The trial court declared that the situation covered by P.D. No. 532 contemplates acts of brigandage against any prospective victim anywhere on the highway.[10]

The trial court found the testimonies of Ferrer and Ramos “positive, spontaneous and forthright” and observed that they “remained steadfast and convincing despite the rigid cross-examination by defense counsel and the clarificatory questions”[11] of the trial court judge. After evaluating the evidence, the trial court convicted appellant and acquitted Colet, as follows:

WHEREFORE, premises considered and the prosecution having established beyond an iota of doubt the guilt of Accused ROLANDO PINEDA Y MANALO of the crime of Robbery with Homicide as defined and penalized under Art. 294 (1) of the Revised Penal Code as amended by RA 7659 and considering the presence of the aggravating circumstance of, by a band, sans any mitigating circumstance to offset it, which per Art. 63 of the Revised Penal Code called for the imposition of the greater penalty, this Court hereby sentences said Accused to suffer the extreme penalty of DEATH; to indemnify the legal heirs of the deceased, SPO1 ARNEL FUENSALIDA, the civil indemnity of P50,000; and to pay the private complainant AMALIA FUENSALIDA the following:

- stipulated actual damages of P60,000;
- moral damages of P40,000;
- exemplary damages of P60,000;
- compensatory damages of P167,872.50

as well as to return the loot in the amount of P1,000 and P5,700 to driver FERRER and conductor RAMOS, respectively; to restore thru this Court, for its proper disposition, the service firearm of victim SPO1 FUENSALIDA described as .38 cal. revolver Smith & Wesson with serial no. 47840; and to pay the costs.

Accordingly, pursuant to Sec. 10, Rule 122 of the Revised Rules of Court, let the entire records hereof including the complete set of the transcript of stenographic notes be forwarded to the Honorable Supreme Court for automatic review within 30 days but not earlier than 15 days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration.

With respect to Accused VICTOR EMMANUEL GONZALES COLET, the prosecution having failed to overcome with the required quantum of proof his constitutional presumption of innocence his motion to dismiss by way of Demurrer to Evidence, is granted. Correspondingly a judgment of ACQUITTAL is hereby entered in his favor.

Accused COLET’s release from detention is in order unless he is being detained further for other lawful cause/s.

Let an alias order of arrest issue forthwith against Accused CELSO SISON Y LLOREN @ BOYET TARTARO and TOTIE JACOB @ TOTIE and thereafter let the case as against them be archived without prejudice to its revival once they be arrested later on.

SO ORDERED.[12]

#### Errors Assigned

Appellant states that the trial court gravely erred to the point of abusing its discretion in the following matters:

- Holding that the prosecution witnesses have positively identified appellant.

- Giving probative weight and value to the testimonies of Camilo Ferrer and Jimmy Ramos despite being inconsistent on material and relevant points and being untruthful to the court.
- Not giving probative weight and credibility to the testimony of accused Victor Emmanuel Gonzales Colet that appellant was not one of those who held-up the bus and killed the victim.
- Ruling out the defense of alibi appellant interposed.[13]

#### The Court's Ruling

The appeal is meritorious. In overturning the ruling of the trial court, we follow the rule that an appeal in a criminal case opens the entire case for review on any question, including one not raised by the parties.[14]

The findings of a trial court, given its vantage point to assess the credibility of witnesses, are entitled to full faith and credit. On appeal, reviewing courts do not disturb such findings of the trial court. However, the reviewing court may overturn the trial court's findings when there is a showing that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and substance, which, if considered, could materially affect the result of the case.[15] This Court has consistently held that the rule on the trial court's appreciation of evidence must bow to the superior rule that the prosecution must prove the guilt of the accused beyond reasonable doubt. The law presumes an accused innocent, and this presumption must prevail unless overturned by competent and credible proof.[16]

A conviction for a crime rests on two bases: (1) credible and convincing testimony establishes the identity of the accused as the perpetrator of the crime; and (2) the prosecution proves beyond reasonable doubt that all elements of the crime are attributable to the accused.[17] The trial court's conviction of appellant fails in both bases.

#### Identity of the Perpetrator

Appellant argues that the trial court erred in holding that the prosecution witnesses positively identified him as one of the perpetrators of the crime.

Ferrer gave a statement at Sub-station 4 of the Caloocan City Police Station on the night of the incident. In his statement dated 15 October 1997, Ferrer describes appellant thus:

12. T: Sa anim na kataong nangholdap may natatandaan ka ba sa kanila?

S:

Ang natatandaan ko ay ang taong tumutok sa akin ng baril na .45 sa ulo at ang kanyang itsura ay balinkinitan ang katawan, 25-30 taong gulang, may hati sa gitna ang buhok, walang bigote, kayumanggi, nakasuot ng polo shirt [na kulay] berde, nakamaong na kupas, salitang tagalog.[18]

.45 sa ulo at ang kanyang itsura ay balinkinitan ang katawan, 25-30 taong gulang, may hati sa gitna ang buhok, walang bigote, kayumanggi, nakasuot ng polo shirt [na kulay] berde, nakamaong na kupas, salitang tagalog.[18]

On 6 November 1998, the police invited Ferrer to identify the perpetrators of the crime from photographs the police showed to him. Ferrer gave a subsequent statement on the identity of the perpetrators as follows:

4.

T:

Ano ang dahilan at ikaw ay naririto sa tanggapan na ito at nagbibigay ng isang salaysay?

**S:**

Upang alamin ko kung aking makikilala ang taong nangholdap sa pampasaherong Bus na aking minamaneho.

5. T: Paano mo makikilala ang mga holdaper?

S: Nabalitaan ko lang po na may litrato dito sa presinto na pinaghihinalaan na nangholdap sa bus.

6. T: Natatandaan mo pa ba ang mukha ng holdaper?

S: Kung sakali ko pong makita ang litrato.

**7. T:**

May ipakikita akong mga litrato, tingnan mong mabuti kung mayroon tao na kasama sa mga nangholdap sa pampasaherong bus?

**S:**

Iyan po sir ang isa at isa pa po ito sir na nangholdap sa Bus na aking minamaneho. (When the Investigator on case presented couples of picture [sic] to the affiant he positively identified two pictures who were responsible in a Bus Hold-up who were identified as (Number 1) Rolando Pineda y Manalo @ Lando, 36 years old, married, jobless, native of Valenzuela and with last known address at Phase 3, Bgy. San Rafael IV, San Jose del Monte, Bulacan, and/or Gumamela St., Malaria, Caloocan City and (Number 2) Celso Sison y Lloren @ Boyet @ Boyet Tartaro with last known address at Gumamela St., Malaria, Caloocan City.[19](Emphasis supplied)

Like Ferrer, Ramos also gave a statement at Sub-station 4 of the Caloocan City Police Station on 15 October 1997, the night of the incident. However, unlike Ferrer, Ramos candidly admitted that he could not identify any of the perpetrators.

9.

**T:**

Sinabi mo kanina na anim yong hold-uppers na pawang armado ano ba mga dala nilang baril at may mamumukhaan ka ba sa kanilang sakaling muli mo silang makita?

**S:**

Armado po sila ng kalibre .45 at .38 revolver. Hindi ko sila mamumukhaan dahil agad po ako nilang pinayuko.[20](Emphasis supplied)

The police later arrested appellant based on an out-of-court identification by Ferrer. Ferrer first identified appellant and Sison through mug shots the police presented to them. Although he testified against Colet, SPO1 Carlito Alas ("SPO1 Alas"), the investigating police officer, admitted that there were only two photographs presented to Ferrer. The police showed Ferrer only the photographs of appellant and his co-accused Sison.[21]

In resolving the admissibility of out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors: (1) the witness' opportunity to view the perpetrator of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty shown by the witness of his identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. [22]

Although showing mug shots of suspects is one of the established methods of identifying criminals,[23] the

procedure used in this case is unacceptable. The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect.[24] The second rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.[25] Thus:

[W] here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."

x x x

A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.[26] (Emphasis supplied)

In the present case, there was impermissible suggestion because the photographs were only of appellant and Sison, focusing attention on the two accused.[27] The police obviously suggested the identity of the accused by showing only appellant and Sison's photographs to Ferrer and Ramos.

The testimonies of Ferrer and Ramos show that their identification of appellant fails the totality of circumstances test. The out-of-court identification of appellant casts doubt on the testimonies of Ferrer and Ramos in court.

In its decision, the trial court relied on the testimonies of Ferrer and Ramos to prove that appellant is one of the perpetrators. On closer examination, however, we see that Ferrer and Ramos failed to establish that what they saw of the perpetrators is sufficient to produce an accurate memory of the incident. During direct examination, Ferrer testified that one of the perpetrators, who poked a gun at his nape, did not allow him to turn back his head. There was limited opportunity for Ferrer, while driving the bus, to see the perpetrators. Thus:

**PROSECUTOR SISON:**

**Q**

Did you hear that utterance made, "Umpisahan na ang laro"?

**A**

Yes, sir.

**Q**

When you heard that, was your bus in motion?

**A**

Yes, sir.

**Q**

What happened next?

**A**

Someone held me at my neck while poking a gun at my nape, sir.

x x x

**Q**

What other utterance was made?

**A**

I saw one of the bus passengers grappling of [sic] one of the hold uppers who was trying to retrieve from [sic] his clutch bag, sir.

**Q**

Did you see that person with the clutch bag and the other person who was trying to grapple the clutch bag?

**A**

No, I was not allowed to turn my head back, sir.

x x x

**Q**

After you heard the shots what happened?

**A**

The one who poked a gun at me said “deretso mo lang.”

**Q**

He never leave you at [sic] your place?

**A**

“Hindi po.”

**Q**

How many shots did you hear?

**A**

Six (6) shots, sir.

**Q**

After those six (6) shots what happened?

**A**

I could not turn my head to see whether the person who was shot was dead, sir.[28]

x x x

**ATTY. CRISOSTOMO:**

**Q**

After the words which someone uttered, you felt somebody held you by the nape and poked a gun at your head, is that correct?

**A**

Yes, he jumped from one of the front seats, sir.

x x x

**Q**

Is this two seater seat where the person who poked a gun at your nape seated located somewhere to your right?

**A**

Yes, sir.

**Q**

This seat and the driver's seat, are they parallel line or side by side or abreast with the driver's seat?

**A**

Slightly slanted from the driver's seat, sir.

**Q**

In other words, this seat is situated somewhere to your back side?

**A**

"Parang tagiliran po."

**Q**

How far from your shoulder?

**A**

(Witness pointing more than a meter.)

**Q**

In other words, you would not see the person sitting on that particular seat not unless you turn over your head to the right, correct?

**A**

Yes, sir.

**Q**

At that time you were concentrated in driving, is it not?

**A**

Yes, sir.

**Q**

As a driver, it's not your business to look around and check on the passengers, it's the duty of the conductor, right?

**A**

Yes, sir.

**Q**

And so sensing that no untoward incident that might happen, you just continued driving peacefully until that very moment when somebody shouted "umpisahan na ang laro," correct?

**A**

Yes, sir.

**Q**

And then immediately after that, someone approached you from your behind and poked you something at your nape which you later felt to be a gun, correct?

A Yes, sir.

Q And he told you to concentrate in your driving, if you want to live, correct?

A Yes, sir.

x x x

**Q**

For fear that something might happen to you if you disobey the instruction of that person at your back, you just concentrated in your driving not even trying to turn your head to look around, correct?

A Yes, sir.[29](Emphasis supplied)

Ferrer insisted that he saw what was happening through the rearview mirror. Although Ferrer felt the presence and heard the voice of the perpetrator at his back, it is not clear if he saw the perpetrator's face or only his back.

**ATTY. CRISOSTOMO:**

**Q**

At the time you heard the gunshots, the person at your back was still there pointing a gun at your nape?

**A**

Yes, he never left, sir.

Q So you could not turn your head to check what was going on at the back of the bus for fear that the man at your back will shoot you?

A "Hindi po ako lumilingon pero nakikita ko sa salamin dahil mayroon po akong rear [view] mirror sa harap."

COURT: (butts in)

Q How big is that mirror?

A (Witness demonstrating with hands for about a foot long and 8 inches in width.)

**ATTY. CRISOSTOMO:**

Q Where is that mirror installed or positioned?

A In front of the driver, sir.

Q When you looked in the mirror you could see the back portion of the bus?

A Yes, sir.[30] (Emphasis supplied)

During cross-examination, Ramos remembered that he saw part of the perpetrator's face.

**ATTY. CRISOSTOMO:**

**Q**

And you were apprehensive even lifting your head to try to take a look at the suspect because it could be very noticeable [and] you might be shot?

A Yes sir.

**Q**

That is why when that suspect demanded money from you your head [was] vowed [sic] down?

**A**

Yes sir. But when I handed the money I took a look at his face particularly the left portion.[31](Emphasis supplied)

The relative positions of Ferrer, Ramos, and the perpetrator who poked a gun at Ferrer's nape, is as follows: Ferrer on the left (driver's) side of the bus and facing the windshield, Ramos on the second step of the running board at the right side of the bus and facing the road,[32] and the perpetrator somewhere in between them, on a level higher than Ramos.[33] Based on Ramos' testimony, Ferrer could not have seen the perpetrator's face by looking at the rearview mirror. Ramos testified that he saw the left side of the perpetrator's face. This meant that the perpetrator was facing the passengers and not the windshield. Thus, if Ferrer while driving could see the perpetrator who was situated at his back, the most he could see through the rearview mirror was the back of the perpetrator who was facing the passengers.

Ferrer, however, is certain that he took a fleeting glance of the perpetrator's face, even as he concentrated on his driving. Obviously, this view of the perpetrator's face did not come from glancing at the rearview mirror. Ferrer claimed to have seen the perpetrator's face before the robbery started, thus:

**ATTY. CRISOSTOMO:**

**Q**

Were you able to [lift your head to look at the rear view mirror] despite the fact that the person who was at your back was poking the gun at your nape and telling you not to make any wrong move because he will shoot you?

**A**

"Bago po nag-umpisa, nakita ko na iyong mukha niya dahil napalingon ako noong nag-umpisa ang laro."[34] (Emphasis supplied)

Ferrer's identification of the perpetrator is inconsistent on how he saw the perpetrator, through the rearview mirror or by looking back at him.

Ramos testified that he saw how appellant and his companions robbed the passengers and killed Fuensalida. However, even if during trial Ramos pointed to appellant as the perpetrator, an examination of Ramos' testimony shows that he did not actually see, much less remember, the faces of the perpetrators. Thus:

**PROSECUTOR SISON:**

**Q**

Those persons whom you saw who sat near the driver if you can see him will you be able to identify him?

**A**

I cannot point to him because when he said those words we were made to vow [sic] our head [sic] down and whenever I made a moved [sic] I was kicked.

Q

You said you cannot identify the persons who sat by the driver of the bus. How about the five other companions [of] that person if you see them again will you be able to identify them?

A Hindi po.

Q Were you able to see the face x x x of that person who sat near the driver [at any instance]?

A I only see [sic] the back of the head because when he turned sideways I was only able to see the back of his head.

Q How about the side view of his face. Were you able to see?

A Opo.

Q

Now, look around the courtroom and point to anyone and look at their [sic] side view of these persons one by one and tell us if any of them resembles that person whom you saw?

A (Witness pointing to the person who identified his name as Rolando Pineda).

**COURT:**

Q How were you able to identify?

A Iyong haba ng konti ng buhok, side view.

Q Was he sporting the same kind of hair?

A Medyo maigsi po.[35] (Emphasis supplied)

A well-known authority[36] in eyewitness identification made a list of 12 danger signals that exist independently of the identification procedures investigators use. These signals give warning that the identification may be erroneous even though the method used is proper. The list is not exhaustive. The facts of a particular case may contain a warning not in the list. The list is as follows:

- (1) the witness originally stated that he could not identify anyone;
- (2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;
- (3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;
- (4) before identifying the accused at the trial, the witness erroneously identified some other person;
- (5) other witnesses to the crime fail to identify the accused;
- (6) before trial, the witness sees the accused but fails to identify him;
- (7) before the commission of the crime, the witness had limited opportunity to see the accused;
- (8) the witness and the person identified are of different racial groups;
- (9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was

involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

(12) the witness fails to make a positive trial identification.

Three of these danger signals apply to the prosecution witnesses' identification of appellant as the perpetrator of the crime. Ramos originally stated that he could not identify any of the perpetrators. Ferrer had a limited opportunity to see the perpetrators before the robbery started. When he first saw appellant, Ferrer had no inkling that appellant would rob them.

The more important duty of the prosecution is to prove the identity of the perpetrator and not to establish the existence of the crime. For even if the commission of the crime is established, without proof beyond reasonable doubt of the identity of the perpetrator, the trial court cannot convict any one.[37] Ferrer and Ramos' mental conception of the incident, the resulting inaccuracy in their narration, and the suggestiveness of the pictures presented to them for identification cast doubt on their testimonies that appellant is one of the perpetrators of the crime.

#### Denial and Alibi as a Defense

The defense of denial and alibi is futile in the face of positive identification of the accused. Courts look with disfavor on the defense of alibi. However, we explained in *Tuason v. Court of Appeals*:[38]

Judges seem disposed more readily to credit the veracity and reliability of eyewitnesses than any amount of contrary evidence by or on behalf of the accused, whether by way of alibi, insufficient identification, or other testimony. They are unmindful that in some cases the emotional balance of the eyewitness is disturbed by her experience that her powers of perception become distorted and her identification frequently most untrustworthy. Into the identification, enter other motives, not necessarily stimulated originally by the accused personally – the desire to requite a crime, to find a scapegoat, or to support, consciously or unconsciously, an identification already made by another.

The defense of alibi assumes importance where the evidence for the prosecution is weak and there is no positive identification of the accused,[39] as in this case. The rule that the accused must satisfactorily prove his alibi was never intended to change the burden of proof in criminal cases. Otherwise, we will have the absurdity of the accused being put to a greater burden if the prosecution's evidence is weak than if it were strong.[40]

While it was not physically impossible for appellant to be at the scene of the crime, corroboration of his alibi comes from three separate sources: Tan, Quiton, and Colet. Tan corroborated appellant's testimony on his whereabouts at the time of the crime. Quiton testified that a day after the crime, he was asked by SPO4 Mario Larenas ("SPO4 Larenas") of the San Jose del Monte, Bulacan police force if he had knowledge of the whereabouts of "Boyot Tartaro, Kulit and Tito." SPO4 Larenas approached Quiton because he knew that Quiton was acquainted with the three. SPO4 Larenas did not mention appellant's name as one of the suspects.[41]

Colet, on the other hand, claimed to have knowledge of the crime and the perpetrators as he was a bus passenger at the time of the crime. Thus:

#### **ATTY. BAUTISTA:**

Q When you boarded that bus where did you take your seat?

A Right side of the bus, third seat from the last seat.

x x x

Q When Totie Jacob declared a hold-up as you say, what did he say?

**A**

While standing Totie Jacob declared a hold-up and said “Walang kikilos. Holdap ito, holdap ito. Pare, umpasahan [sic] na natin” and his companions stood up and said “Yumuko kayong lahat” and then his companion who stood up holding a grenade and told them to vow [sic] down.

x x x

Q How about the passengers? What did they do when they [were] ordered to bowed-down [sic]?

A They all bowed down.

Q How about you? What did you do?

A I also bowed my head down but I was peeping clandestinely at them because I did not expect that I would be in that situation and looking at what they are doing.

x x x

Q What did the hold-uppers do when all the passengers were no longer looking at them because their heads were bowed down?

**A**

The other hold-uppers nearest to the passengers ordered the passengers to put their things down in a black duffel bag (“parang supot ni Hudas”).[42]

Colet testified that appellant was not a perpetrator in the crime and absolved him from liability.

**ATTY. BAUTISTA:**

**Q**

You said that there were six hold-uppers all in all?

**A**

Yes, sir.

**Q**

And you said you have taken a good look at these hold-uppers?

**A**

Yes, sir.

**Q**

Will you kindly tell us if Rolando Pineda was one of those six hold-uppers that you have seen?

**A**

Wala po, hindi po.

**Q**

Will you kindly tell us also if Rolando Pineda was one of the passengers of the bus, if you know?

**A**

Hindi rin po, wala rin po.

**Q**

Will you kindly tell us or if you likewise see [sic] Rolando Pineda at any time of the night of October 15, 1997?

**A**

Wala rin po.

**Q**

You said that you know Rolando Pineda having met you and seen him for several times. If you will see Rolando Pineda again will you be able to recognized [sic] him?

**A**

Yes, sir.

Q Will you kindly tell us if Rolando Pineda is inside this courtroom now?

A Yes, sir.

Q Will you kindly point to us the person of Rolando Pineda?

A (Witness correctly pointing to accused Rolando Pineda.)

x x x

**PROSECUTOR SISON:**

Q What was the position of the policeman who [was] shot at the bus at the time accused Celso Sison shot him?

A The person who shot the policeman was at the policeman's back.

x x x

Q When you saw Celso Sison shot [sic] the victim inside the bus were you standing then?

A I was still stooping down and at the same time peeping.[43]

Colet knows the names and faces of the perpetrators of the crime, as they all live near each other. Colet asserted

that he was an eyewitness and that he remembers the perpetrators and even the weapons used.

**PROSECUTOR SISON:**

**Q**

You said you saw the person who shot [the policeman]? Who was that person who shot [the policeman] inside the bus?

**A**

Roberto Sison alyas Boyet Tartaro.

x x x

**Q**

And who was that hold-upper who was near the driver of the bus?

**A**

Ang nasa likod po ng driver ay si Spencer.

**Q**

Who is Spencer?

**A**

Iyon lang po ang pagkakakilala sa taong iyon. Malapit din po sila sa amin nakatira.

x x x

**Q**

You also saw Totie Jacob, right?

**A**

In front of the door.

x x x

**Q**

x x x Do you know the three others?

**A**

Ma'am iyong dalawa, iyong isa hindi ko po kilala.

Q

Who were the other two?

A

Edison Palmario, the one holding the hand grenade, and alias Barok.

x x x

Q

x x x [W]hich came first, the shooting of the police officer or the taking of personal belongings of the passengers?

A

Sabay po.

Q

And the hold-upper also took away the collection of the bus conductor. Did you see that?

A

I saw Totie Jacob commander the bus conductor.

x x x

Q

Tell us again what were those weapons used by them?

A

Celso Sison alias Tartaro .38 gun, Barok a knife, Palmario a hand grenade, Spencer a .38 gun, Totie Jacob a .45 gun and the 6th one a knife.[44]

The prosecution asks this Court to ignore Colet's testimony that appellant was not at the crime scene and did not participate in the criminal act. The prosecution considers Colet's testimony as polluted, coming from a co-accused. The flaw in this argument is that Colet is not a discharged co-accused.[45] The trial court acquitted Colet when it granted his Demurrer to Evidence, which the prosecution did not even oppose.[46] The defense presented Colet who testified that neither he nor appellant participated in the crime. Colet's testimony corroborates those of Ferrer and Ramos on the number of perpetrators and the manner of commission of the crime. Colet gave his testimony in an unhesitating and straightforward manner.

Appellant even believed that Colet falsely implicated him in the crime at the beginning. Appellant and Colet had a previous rivalry over a woman and Colet is known in their area as someone with influence, being a police informer. Unless he simply wanted to tell the truth, Colet was unlikely to testify on appellant's innocence when he himself is charged with the same crime and was present at the crime scene. Appellant also attributes the motive of revenge to SPO1 Alas, as appellant previously beat up SPO1 Alas' nephew during a brawl.[47] The prosecution did not present evidence to rebut this statement.

In its attempt to pin the crime on appellant, the prosecution dug up other criminal cases filed against appellant.

Appellant was previously charged with robbery and illegal possession of a deadly weapon, concealing a deadly weapon, and assault, for which he was released after posting bond. Section 34, Rule 130 of the Rules of Court is instructive on this point:

SEC. 34. Similar acts as evidence.- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.

Evidence is not admissible when it shows, or tends to show, that the accused in a criminal case has committed a crime independent from the offense for which he is on trial. A man may be a notorious criminal, and may have committed many crimes, and still be innocent of the crime charged on trial.[48]

Section 14, Article 3 of the 1987 Philippine Constitution provides that “in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.” An accused is entitled to acquittal unless his guilt is proved beyond reasonable doubt. The prosecution has failed to discharge its burden of proof. We hold that appellant is entitled to a mandatory acquittal.

WHEREFORE, the appeal is GRANTED. The decision of the trial court is REVERSED. Appellant Rolando Pineda y Manalo is ACQUITTED on reasonable doubt. His immediate release is ordered, unless there are other valid causes for his continued detention.

The Director of the Bureau of Corrections is DIRECTED to implement this Decision and report to this Court immediately the action taken not later than five days from receipt of this Decision.

**SO ORDERED.**

Vitug, (Acting Chief Justice), Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.  
Davide, Jr., C.J., and Puno, J., on official leave.

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[1] Penned by Judge Myrna Dimaranan Vidal.

[2] Dated 21 April 1998.

[3] During trial, Celso Sison is also referred to as Roberto Sison. See TSN, 5 October 1999, p. 18.

[4] Rollo, p. 4.

[5] For violation of Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974) and Presidential Decree No. 1866 (Penalties for Illegal/Unlawful Possession, etc. of Firearms, Ammunition or Explosives, etc.).

[6] Records, p. 21; TSN, 25 August 1999, pp. 8-11.

[7] Rollo, pp. 29-36.

[8] Rollo, pp. 36-41.

[9] Art. 294. Robbery with violence against or intimidation of persons – Penalties – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed x x x.

- [10] Rollo, p. 43.
- [11] Ibid., p. 44.
- [12] Ibid., pp. 54-55.
- [13] Ibid., p. 81.
- [14] People v. Mataro, G.R. No. 130378, 8 March 2001, 354 SCRA 27.
- [15] See Katipunan v. Katipunan, Jr., 425 Phil. 818 (2002).
- [16] People v. Quima, No. L-74669, 14 April 1988, 159 SCRA 613 citing People v. Alto, 135 Phil. 136 (1968).
- [17] See People v. Casinillo, G.R. No. 97441, 11 September 1992, 213 SCRA 777.
- [18] Exhibits for Prosecution, p. 6; Exh. "E."
- [19] Exhibits for Prosecution, p. 7.
- [20] Ibid., p. 13.
- [21] TSN, 8 November 1999, p. 7. See also Records, p. 5; TSN, 20 July 1999, p. 15; Exhibits for Prosecution, Exh. "E-1-a," p. 8.
- [22] People v. Teehankee, Jr., 319 Phil. 128, 180 (1995).
- [23] People v. Villena, 390 Phil. 637 (2002).
- [24] Patrick M. Wall, Eye-Witness Identification in Criminal Cases 74 (1965).
- [25] Ibid., p. 81.
- [26] Wall, *supra* note 24 at 68-69.
- [27] See People v. Villena, 390 Phil. 637 (2002).
- [28] TSN, 14 July 1999, pp. 5-8.
- [29] TSN, 28 July 1999, pp. 4-7.
- [30] Ibid., pp. 8-10.
- [31] Ibid.
- [32] TSN, 9 August 1999, p. 5.
- [33] Ibid., p. 6.
- [34] Ibid., p. 7.
- [35] TSN, 27 July 1999, pp. 5-7.
- [36] Wall, *supra* note 24 at 90-130.
- [37] Tuason v. Court of Appeals, 311 Phil. 813 (1995).
- [38] Ibid.
- [39] People v. Omega, No. L-29091, 14 April 1977, 76 SCRA 262.

[40] *People v. Fraga, et al.*, 109 Phil. 241 (1960).

[41] TSN, 31 August 1999, pp. 3-5, 7.

[42] TSN, 5 October 1999, pp. 6-9.

[43] *Ibid.*, pp. 9-12.

[44] *Ibid.*, pp. 11, 13, 23-24, 29-30.

[45] See *People v. Victor*, G.R. Nos. 75154-55, 6 February 1990, 181 SCRA 818.

[46] Rollo, p. 41.

[47] TSN, 1 September 1999, pp. 3-5.

[48] *People v. Galo*, 227 Phil. 181 (1986).

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