

JOSE D. FILOTEO, JR., PETITIONER, VS. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 79543. October 16, 1996*

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-79543/>**PANGANIBAN, J.:**

A person under investigation for the commission of an offense is constitutionally guaranteed certain rights. One of the most cherished of these is the right "to have competent and independent counsel preferably of his choice". The 1987 Constitution, unlike its predecessors, expressly covenants that such guarantee "cannot be waived except in writing and in the presence of counsel". In the present case, petitioner claims that such proscription against an uncounselled waiver of the right to counsel is applicable to him retroactively, even though his custodial investigation took place in 1983 -- long before the effectivity of the new Constitution. He also alleges that his arrest was illegal, that his extrajudicial confession was extracted through torture, and that the prosecution's evidence was insufficient to convict him. Finally, though not raised by petitioner, the question of what crime -- brigandage or robbery -- was committed is likewise *motu proprio* addressed by the Court in this Decision.

Challenged in the instant amended petition is the Decision[1] of respondent Sandiganbayan[2] in Criminal Case No. 8496 promulgated on June 19, 1987 convicting petitioner of brigandage, and the Resolution[3] promulgated on July 27, 1987 denying his motion for reconsideration.

The Facts

Petitioner Jose D. Filoteo, Jr. was a police investigator of the Western Police District in Metro Manila, an old hand at dealing with suspected criminals. A recipient of various awards and commendations attesting to his competence and performance as a police officer, he could not therefore imagine that one day he would be sitting on the other side of the investigation table as the suspected mastermind of the armed hijacking of a postal delivery van.

Along with his co-accused Martin Mateo, Jr. y Mijares, PC/Sgt. Bernardo Relator, Jr. y Retino, CIC Ed Saguindel y Pabinguit, Ex-PC/Sgt. Danilo Miravalles y Marcelo and civilians Ricardo Perez, Reynaldo Frias, Raul Mendoza, Angel Liwanag, Severino Castro and Gerardo Escalada, petitioner Filoteo was charged in the following Information:[4]

"That on or about the 3rd day of May, 1982, in the municipality of Meycauyan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, two of whom were armed with guns, conspiring, confederating together and helping one another, did then and there wilfully, unlawfully and feloniously with intent of gain and by means of violence, threat and intimidation, stop the Postal Delivery Truck of the Bureau of Postal while it was travelling along the MacArthur Highway of said municipality, at the point of their guns, and then take, rob and carry away with them the following, to wit:

- 1) Postal Delivery Truck
- 2) Social Security System Medicare Checks and Vouchers
- 3) Social Security System Pension Checks and Vouchers

- 4) Treasury Warrants
- 5) Several Mail Matters from abroad

in the total amount of P253,728.29 more or less, belonging to US Government Pensionados, SSS Pensionados, SSS Medicare Beneficiaries and Private Individuals from Bulacan, Pampanga, Bataan, Zambales and Olongapo City, to the damage and prejudice of the owners in the aforementioned amount.

Contrary to law."

On separate dates, accused Filoteo, Mateo, Saguindel, Relator and Miravalles, assisted by their respective counsel, pleaded not guilty. Their co-accused Perez, Frias, Mendoza, Liwanag, Castro and Escalada were never arrested and remained at large. Accused Mateo escaped from police custody and was tried in absentia in accordance with Article IV, Section 19 of the 1973 Constitution. Accused Saguindel and Relator failed to appear during the trial on February 21, 1985 and on March 31, 1986, respectively, and were thus ordered arrested but remained at large since then. Like in the case of Mateo, proceedings against them were held in absentia.[5] Only Filoteo filed this petition, after the respondent Court rendered its assailed Decision and Resolution.

Before trial commenced and upon the instance of the prosecution for a stipulation of facts, the defense admitted the following:[6]

"The existence of the bound record of Criminal Case No. 50737-B-82, consisting of 343 pages from the Bulacan CFI (Exhibit A); in 1982 or thereabouts, accused Bernardo Relator was a PC Sergeant at Camp Bagong Diwa, Bicutan, Metro Manila; as such PC Sergeant, accused Relator was issued a service revolver, Smith & Wesson Revolver, 32 (sic), with Serial No. 11707 (Exhibit B) and holster (Exhibit B-1) with six (6) live ammo (Exhibit B-2); in 1982 or thereabouts, accused Eddie Saguindel was a PC Constable First Class; on May 30, 1982, accused Saguindel, together with accused Relator and Danilo Miravalles, a former PC Sergeant, was invited for investigation in connection with the hijacking of a delivery van by the elements of the Special Operations Group, PC, and the three availed of their right to remain silent and to have counsel of their choice, as shown by their Joint Affidavit (Exhibit A-20); and the existence of the sworn statement executed by accused Martin Mateo (Exhibit A-11) as well as the Certification dated May 30, 1982, subject to the qualification that said document was made under duress."

The prosecution sought to prove its case with the testimonies of Bernardo Bautista, Rodolfo Miranda, Capt. Rosendo Ferrer, M/Sgt. Noel Alcazar and Capt. Samuel Pagdilao, Jr.[6-a] and the submission of Exhibits A to K. In their defense, accused Filoteo and Miravalles presented their respective testimonies plus those of Gary Gallardo and Manolo Almogera. Filoteo also submitted his Exhibits 1-14-Filoteo, but Miravalles filed no written evidence. Thereafter, the prosecution proffered rebuttal evidence and rested with the admission of Exhibits A-16-a, A-31 and L.

Evidence for the Prosecution

At about 6:30 in the morning of May 3, 1982, Bureau of Post mail van no. MVD 02 left San Fernando, Pampanga to pick up and deliver mail matters to and from Manila. On board the vehicle were Nerito Miranda, the driver, and two couriers named Bernardo Bautista and Eminiano Tagudar who were seated beside the driver. They arrived at around 9:40 that morning at the Airmail Distribution Center of the Manila International Airport where they were issued waybills[7] for the sacks of mail they collected. They then proceeded to the Central Post Office where they likewise gathered mail matters including 737 check letters[8] sent by the United States Embassy. All the mail matters were placed inside the delivery van, and its door padlocked.

As they had to deliver mail matters to several towns of Bulacan, they took the MacArthur Highway on the return trip to Pampanga. When they reached Kalvario, Meycauayan, Bulacan at about 4:30 in the afternoon, an old blue Mercedes Benz sedan[9] overtook their van and cut across its path. The car had five (5) passengers -- three seated

in front and two at the back. The car's driver and the passenger beside him were in white shirts; the third man in front and the person immediately behind him were both clad in fatigue uniforms, while the fifth man in the back had on a long-sleeved shirt.[10]

Two of the car passengers aimed an armalite and a hand gun at driver Nerito Miranda as someone uttered, "Are you not going to stop this truck?"[11] Frightened, Miranda pulled over and stopped the van's engine. Alighting from the car, the armed group identified themselves as policemen.[12] They ordered the postal employees to disembark from the van. As he stepped out of the van, Miranda took the ignition key with him, but when threatened, he surrendered it to one of the car passengers.[13] The three postal employees were then ordered to board the Benz.

As he was about to enter the car, Bautista looked back and saw one of the malefactors, who turned out to be Reynaldo Frias, going up the van. Inside the car, the three delivery employees were ordered to lower their heads. They sat between two of their captors at the back of the car while two others were in front. Later, Nerito Miranda asked permission to straighten up as he was feeling dizzy for lack of air. As he stretched, he caught a glimpse of the pimply face of the man to his left. He also recognized the driver who had glanced back. These men turned out to be Angel Liwanag and Reynaldo Frias, respectively.[14]

As the car started moving, Bautista complained about feeling "densely confined". He was allowed to raise his head but with eyes closed. However, he sneaked a look and recognized the driver of the car as Raul Mendoza and the fellow beside him who poked a "balisong" at him as Angel Liwanag. The man in uniform on the front seat was Eddie Saguindel. Earlier, as he was about to enter the car, Bautista looked back and recognized Frias.[15] These incidents yielded the pieces of information critical to the subsequent identification of Mendoza, Liwanag, Saguindel and Frias in the line-up of suspects at Camp Crame later on.

The car seemed to move around in circles. When it finally came to a stop, the captured men discovered that they were along Kaimito Road in Kalookan City. They were made to remove their pants and shoes and then told to run towards the shrubs with their heads lowered. Upon realizing that the hijackers had left, they put on their pants and reported the incident to the Kalookan Police Station.

The Security and Intelligence Unit of the Bureau of Posts recovered the postal van at the corner of Malindang and Angelo Streets, La Loma, Quezon City on May 4, 1982. Discovered missing were several mail matters,[16] including checks and warrants, along with the van's battery, tools and fuel.[17]

In a letter-request dated May 6, 1982 to then Col. Ramon Montaño, then Postmaster General Roilo S. Golez sought the assistance of the Special Operations Group (SOG) of the Philippine Constabulary in the investigation of the hijacking incident.[18] Responding to the request, the SOG, which was tasked to detect, investigate and "neutralize" criminal syndicates in Metro Manila and adjacent provinces, organized two investigative teams. One group was led by Capt. Rosendo Ferrer and the other by 1st Lt. Samuel Pagdilao. Initially, they conducted a "massive intelligence build-up" to monitor the drop points where the stolen checks could be sold or negotiated.

On May 28, 1982, the SOG received a tip from a civilian informer that two persons were looking for buyers of stolen checks. Capt. Ferrer requested the informer to arrange a meeting with them. The meeting materialized at about 9:00 P.M. of May 29, 1982 at the Bughaw Restaurant in Cubao, Quezon City. With cash on hand, Capt. Ferrer posed as the buyer. The informer introduced him to Rey Frias and Rafael Alcantara. Frias in turn showed Capt. Ferrer a sample Social Security System (SSS) pension check and told him that the bulk of the checks were in the possession of their companions in Obrero, Tondo, Manila. After some negotiations, they agreed to proceed to Tondo. Then as they boarded a car, Capt. Ferrer introduced himself and his companions as lawmen investigating the hijacking incident. Shocked and distressed, Frias calmed down only when assured that his

penalty would be mitigated should he cooperate with the authorities. Frias thus volunteered to help crack the case and lead the SOG team to Ricardo Perez and Raul Mendoza.

Capt. Ferrer instructed Lt. Pagdilao, his assistant operations officer who was in another car during the mission, to accompany Frias to Obrero, Tondo while he escorted Alcantara to their headquarters at Camp Crame. On the way to the headquarters, Alcantara denied participation in the hijacking although he admitted living with Martin Mateo who allegedly was in possession of several checks. Alcantara was turned over to the investigation section of the SOG for further questioning.

Meanwhile, Lt. Pagdilao's group was able to corner Ricardo Perez in his house in Tondo. Confronted with the hijacking incident, Perez admitted participation therein and expressed disappointment over his inability to dispose of the checks even after a month from the hijacking. He surrendered the checks in his possession to Lt. Pagdilao.[19]

An hour and a half later, Capt. Ferrer received information over their two-way radio that Ricardo Perez and Raul Mendoza were in Lt. Pagdilao's custody. Capt. Ferrer ordered that, instead of returning to headquarters, Lt. Pagdilao and his companions should meet him in Quirino, Novaliches to apprehend Martin Mateo. They met at the designated place and proceeded to Gulod, Novaliches arriving there at about 10:30 P.M. of May 29, 1982.

Walking atop a ricefield dike to the house of Mateo, they noticed two men heading in their direction. Perez identified them as Martin Mateo and Angel Liwanag. The latter threw something into the ricefield which, when retrieved, turned out to be bundles of checks wrapped in cellophane inside a plastic bag.[20] As the two were about to board the SOG teams's car, Mateo said, "Sir, kung бага sa basketball, talo na kami. Ibigay ko yong para sa panalo. Marami pa akong tseke doon sa bahay ko, sir, kunin na natin para di na natin babalikan." [21] Capt. Ferrer accompanied Mateo to his house where they retrieved several other checks in another plastic bag.

On the way to the SOG headquarters in Camp Crame, Mateo and Liwanag admitted participation in the postal hijacking. At a confrontation with Perez and Mendoza, all four of them pointed to petitioner, Jose D. Filoteo, Jr., as the mastermind of the crime.

Consequently, Capt. Ferrer directed Lt. Pagdilao to accompany Mateo to the house of petitioner in Tondo, Manila. The lawmen found petitioner at home. Upon being invited to Camp Crame to shed light on his participation in the hijacking, petitioner was dumbfounded ("parang nagulat"). Pursuant to standard operating procedure in arrests, petitioner was informed of his constitutional rights,[22] whereupon they proceeded to Camp Crame. However, the group, including petitioner, returned to the latter's place to recover the loot. It was "in the neighborhood," not in petitioner's house, where the authorities located the checks.[23]

The authorities confronted Filoteo about his participation in the hijacking, telling him that Frias, Mendoza and Perez had earlier volunteered the information that petitioner furnished the Benz used in the hijacking. Thereupon, Filoteo admitted involvement in the crime and pointed to three other soldiers, namely, Eddie Saguindel, Bernardo Relator and Jack Miravalles (who turned out to be a discharged soldier), as his confederates. At 1:45 in the afternoon of May 30, 1982, petitioner executed a sworn statement in Tagalog before M/Sgt. Arsenio C. Carlos and Sgt. Romeo P. Espero which, quoted in full, reads as follows:

"BABALA: -- Nais kong ipaalam sa iyo, Patrolman Filoteo, na ang dahilan ng pagsisiyasat na ito ay tungkol sa isang kasong Robbery-in-Band/Hi-Jacking na naganap noong ika-3 ng Mayo 1982 doon sa Meycauyan, Bulacan, mga bandang alas-4:00 ng hapon, humigit-kumulang, kung saang maraming tsekeng US, tseke ng BIR at iba pang mga personal na tseke ang nabawi mula sa iyo. Nais ko ring ibigay sa iyo ang babala alinsunod sa mga isinasaad ng Section 20, Article IV ng Bagong Saligang Batas ng Republika ng Pilipinas, kagaya ng mga sumusunod:

- a. Na ikaw ay may karapatang tumahimik;
- b. Na ikaw ay may karapatang kumuha ng isang abugadong sarili mong pili upang may magpapayo sa iyo habang ikaw ay sinisiyasat;
- c. Na ikaw ay may karapatang huwag sumagot sa mga katanungang maaring makasira sa iyo sa dahilang anumang iyong isalaysay ay maaaring gamitin pabor or laban sa iyo sa kinauukulang hukuman;
- d. Na ikaw ay walang maibabayad sa isang abugado, ako mismo ang makipag-ugnayan sa CLAO-IBP upang ikaw ay magkaroon ng isang abugadong walang bayad.

1. TANONG:- Ang mga bagay-bagay bang akin nang naipaliwanag sa iyo ay iyong lubos na naiintindihan at nauunawaan?

SAGOT:- Opo.

2. T:- Handa mo bang lagdaan ang ilalim ng katanungan at sagot na ito bilang katibayan na iyo ngang naiintindihan ang iyong mga karapatan at gayun na rin sa dahilan ng pagsisiyasat na ito, at ikaw din ay nakahanda ngang magbigay ng isang malaya at kusang-loob na salaysay, sumagot sa mga katanungan at sumusumpang lahat ng iyong isasalaysay ay pawang mga katotohanan lamang?

S:- Opo, pipirma ako Ser.

(Sgd.)

JOSE D. FILOTEO

(Affiant)

MGA SAKSI:

(Sgd.) (Sgd.)

ROMEO P. ESPERO THERESA L. TOLENTINO

Ssg., PC C1C WAC (PC)"

3. T:- Maari bang sabihin mong muli ang iyong buong pangalan, edad at iba pang bagay-bagay na maaring mapagkakikilalanan sa iyo?

S:- Jose Filoteo y Diendo, 30-anyos, may asawa, isang Patrolman ng Western Police District, Metropolitan Police Force na kasalukuyang nakatalaga sa General Assignment Section, Investigation Division ng naturang Distrito ng Pulisya at kasalukuyang nakatira sa No. 810 Cables St., Dagupan, Tondo, Manila.

4. T:- Kailan ka pa na-appoint sa service bilang isang Kabatas?

S:- Noon pong October 1978, hindi ko maalaala ang exactong petsa, noong ako ay mapasok sa serbisyo.

5. T:- Kailan ka pa naman na-assign sa GAS, WPD, MPF?

S:- Noon lamang pong January 1982.

6. T:- Patrolman Filoteo, ikaw ba ay tubong saang bayan, lungsod or lalawigan?

S:- Pagkakaalam ko sa tatay ko ay Bulacan samantalang ang aking ina naman ay Bisaya, pero ako ay ipinanganak na sa Maynila noon July 17, 1951.

7. T:- Ano naman ang natapos mong kurso sa pag-aaral?

S:- Undergraduate ako ng BS Criminology sa PCCr, dahil hindi ko natapos ang second semester ng 4th year ko.

8. T:- Ano naman ang iyong specific designation sa GAS, ID, WPD-MPF?

S:- Sa Follow-Up Unit ako.

9. T:- At bilang miyembro ng follow-up unit ng GAS, ano naman ang iyong mga specific duties?

S:- Kami po ang magsasagawa ng follow-up kung may mga at large sa mga suspects namin sa mga kasong hawak ng investigation.

10. T:- Noong ika-3 ng Mayo 1982, mga bandang alas-4:00 ng hapon humigit kumulang, saan ka naroroon at ano ang iyong ginagawa?

S:- Nasa Plaza Lawton ho kami, eh, at inaantay na namin iyong hinayjack namin na Philippine Mail delivery van.

11. T:- Wika mo'y kami, sinu-sino ang tinutukoy mong mga kasamahan?

S:- Si Carding Perez, ho; si Junior ho (Affiant pointed to Martin Mateo, Jr. who was seated in the investigation room and asked the name and was duly answered: Martin Mateo, Jr.); si Rey Frias; Raul Mendoza; Angelo Liwanag at ang mga taga LRP ng PC Brigade na sina Sgt. Ed Saguindel, Sgt. Dan Miravales at isa pang Sergeant na ang alam ko lang sa kanya ay JUN ang tawag namin. Walo (8) (corrected and initialled by affiant to read as 'SIYAM [9]') kaming lahat doon noon at ang mga gamit naman naming kotse noon ay ang kotse ng kumpare kong si Rudy Miranda na isang Mercedes Benz na may plakang NMJ-659 kung saang ang driver namin noon ay si Raul Mendoza (corrected and initialled by affiant to read as 'AKO') at ang mga kasama naman naming sakay ay sina Angelo Liwanag, Sgt. Ed Saguindel at Sgt. Jun na parehong taga-LRP (affiant added and initialled this additional fact: 'AT RAUL MENDOZA'). Ang isang kotse namang gamit namin ay pag-aari daw ng pinsan ni Carding Perez na kanya na rin mismong minamaneho na isang Lancer na dirty-white ang kulay at ang mga sakay naman ni Carding Perez ay sina Junior Mateo, Rey Frias at Sgt. Dan Miravalles ng LRP rin. Pero may kasama pa kaming contact ni Carding Perez na taga-loob ng Post Office na sina Alias NINOY na isang dispatcher at Alias JERRY, dahil ang mastermind dito sa trabahong ito ay si Carding PEREZ at kami naman ng mga sundalong taga-LRP ay kanila lamang inimporta upang umeskort sa kanila sa pag-hijack ng delivery van.

12. T:- Anong oras naman noong umalis ang delivery van ng Post Office patungong norte?

S:- Kung hindi ako nagkakamali ay nasa pagitan na noon ng alas-4:00 hanggang alas-5:00 ng hapon.

13. T:- Isalaysay mo nga ng buong-buo kung ano ang mga naganap noong hapon na iyon?

S:- Noon pong lumakad na ang delivery van ng Central Post Office, sinundan na namin, una ang van, sumunod ang Lancer at huli ang Mercedes Benz namin. Pagdating namin sa Malinta, Valenzuela Metro Manila ay nagpalit kami ng puwesto sa pagsunod, van naman ngayon, sunod ang Mercedes Benz at huli na ang Lancer. Noong makapasok na kami ng boundary ng Meycauyan, Bulacan ay kumuha na kami ng tiyempo at noon makatiyempo kami ay kinat namin ang delivery van. Tumigil naman ito at bumaba kaagad sina Sgt. Ed Saguindel at Sgt. Jun ng LRP dahil sila noon ang may hawak ng kanilang Armalite Rifle pero may service pa silang maiksing baril. Pinababa nila ang tatlong maydala ng delivery van at pinasakay sa Mercedes Benz, habang nakatutok ang kanilang mga baril sa kanila. Ako naman ay bumaba na sa aming kotse at sumakay ng delivery van at ako na mismo ang nagmaneho at sinamahan naman ako nina Junior Mateo at si Rey Frias, tatlo (3) rin kaming pumalit sa puwesto noong tatlong (3) taga-Post Office na maydala ng delivery van. Nag-Uturn (sic) kami ngayon at ibinalik na namin sa Manila ang van. Iyong Mercedes Benz na minamaneho pa rin ni Raul Mendoza ay dumeretso pa norte samantalang ang Lancer naman ay nag-U-turn din at sumunod sa amin. Noong makarating na kami sa Malinta, Valenzuela, Metro Manila ay inunahan na kami ng Lancer at iyon na nga, parang follow the leader na dahil siya na noon ang aming guide.

14. T:- Ipagpatuloy mo ang iyong pagsasalaysay?

S:- Dumeretso kami ngayon sa may Obrero, sa bahay mismo nina Carding Perez, at noong nakarating ng kami roon ay iniyatras ko na ang van sa kanilang garahe at doon ay ibinaba namin lahat ang mga duffle bag, hindi ko na po alam kung ilan lahat iyon, na siyang laman ng delivery van at pagkatapos ay umalis kaming muli ng mga kasama ko rin sa van papuntang Quezon City kung saan namin inabandon ang delivery van. Sa Retiro ho yata iyong lugar na iyon, kung hindi ako nagkakamali.

15. T:- Ano ang mga sumunod na nangyari?

S:- Sumakay kami ngayon ng taksi at bumalik na kami kina Carding Perez sa may bahay nila sa Obrero, Tondo, Manila at inabutan na namin sila na nagkakarga na noong mga duffle bag sa (sic), madilim na ho noon, sa isang kotseng mamula-mula o orange na Camaro at isa pang Mercedes Benz na brown, dahil ang Lancer ay isinoli na raw nila sa may-ari. Dinala nila ngayon ang mga duffle bag sa Bocaue, Bulacan, iyon kasi ang usapan namin noon dahil sumilip lamang ako noon at kasama ko si Carding Perez, kami naman ngayon ay pumunta sa bahay nina Rudy Miranda sa San Marcelino, Malate, Manila na sakay ng isang Toyota Corona na brown na si Carding Perez ang nagmaneho. Pagdating namin doon sa kina Rudy Miranda ay naroon na rin noon ang Mercedes Benz na ginamit namin, pero wala na ang crew ng delivery van dahil ibinaba at iniwanan daw nila sa Caloocan City. Ang naroroon na lamang noon ay sina Angelo Liwanag, si Raul Mendoza, si Sgt. Ed Saguindel at si Sgt. Jun na parehong taga-LRP. Naiwan na noon ang Mercedes Benz namin doon kina Rudy Miranda at iniwan na rin ang susi doon sa kamag-anak, dahil hindi nila alam ang trabahong ito. Sumakay na iyong apat naming kasama sa Toyota Corona na sakay namin at inihatid namin sina Sgt. Saguindel at Sgt. Jun doon sa tinitirhan nitong huling nabanggit na sundalo doon sa malapit sa Del Pan Bridge sa may Recto Avenue sa San Nicolas yata iyon sa Manila. Kami naman ngayong apat, sina Carding Perez, Angelo Liwanag at si Raul Mendoza ay tumuloy na sa Bocaue, Bulacan. Dumaan kami sa North Diversion Road at paglabas namin sa exit papuntang Bocaue, Bulacan ay hindi na kalayuan doon, hindi ko alam ang lugar pero alam kong puntahan. Bahay daw yata ng kamag-anak ni Carding Perez iyon pero hindi ko alam ang pangalan. Naroon na ngayon ang buong tropa, maliban sa mga dalawang sundalong naihatid na namin sa may Manila, at may mga nadagdag pang ibang mukha pero hindi ko ito mga kakilala. Si JACK o Sgt. Dan Miravalles ay naroon din noon. Kumain kami, pagkatapos ay nagbukasan na ng mga duffle bag. Iyon na nga, nakita na namin ang mga tsekeng ito, (Affiant pointed to the checks he voluntarily surrendered) at aming inihiwalay ngayon sa mga sulat na naroon na sinunog lahat pagkatapos doon sa bahay ni Junior Mateo sa Novaliches. Di magdamag ngayon ang trabaho namin, kinabukasan ay kanya-kanyang uwian na, pagkatapos ay pahinga. Kinabukasan muli, gabi, inilipat na namin doon sa bahay ni Junior Mateo ang mga tsekeng ito (Affiant again referred to said checks). Isinakay namin noon sa isang cargo truck na pag-aari din daw nina Carding. Iyong mga tsekeng iyan ngayon ay nakalagay noon doon sa isang sikretong compartment sa gitna ng truck, doon ba sa may chassis. Sikretong compartment iyon, na mahirap mahalata.

16. T: Ikaw ba naman ay mayroong dalang baril noon at kung ganoon, sabihin mo nga kung anong uring baril iyon?

S:- Wala po akong baril, Ser.

17. T:- Paano naman napunta ang mga tsekeng ito (the checks recovered from the Affiant was referred to) sa iyo?

S:- E, di ganoon na nga ho, habang tumatagal ay umiinit ang situwasyon sa aming grupo, dahil iyong partehan sana namin ay puro pangako ang nangyari. Kaya napagpasiyahan namin na hatiin na lamang iyong mga tseke upang walang onsehan sa amin. Ito ngayon ay parte namin nina Sgt. Ed Saguindel, Sgt. Dan Miravalles Alias JACK at ni Sgt. Jun, dahil noong una ay doon muna sa amin ito nakatago (The checks recovered from the Affiant was referred to). Pero habang tumatagal ay umiinit at nalaman namin pati na may alarma na, kaya't inilipat namin doon sa may Raxa Bago sa may likod ng Alhambra Cigar & Cigarette Factory sa Tondo, Manila at akin munang ipinatago sa isang kumare ko doon, pansamantala, pero hindi alam nitong kumare ko ang laman noon dahil mahigpit kong ipinagbiling na huwag nilang bubuksan. Doon na rin namin kinuha iyon noong

isurrender ko ang mga tsekeng ito kagabi, at hanggang sa kinuha na namin ang supot na ito (the checks placed in a plastic bag was again referred to) ay wala pa rin kamalay-malay ang kumare ko.

18. T:- Iyong sinasabi mong mga kontak nina Carding Perez sa Central Post Office, mga kakilala mo rin ba ang mga ito?

S:- Iyong araw na lamang na iyon ko sila nakita, dahil maghapon ko noon silang nakikita, itong si Alias NINOY lamang ang dispatcher, dahil palabas-labas siya noon at nakikipag-usap kina Carding Perez, Raul Mendoza at saka si Rey Frias. Makikilala ko itong si Alias NINOY kung makita ko siyang muli.

19. T:- Sino naman ang kumontak sa iyo upang sumama sa trabahong ito?

S:- Si Junior Mateo po, ipinakilala niya ako kina Carding at sa buong tropa na namin.

20. T:- Pansamantala ay wala na muna akong itatanong pa sa iyo, mayroon ka bang nais na idagdag, bawasin o palitan kaya sa salaysay na ito?

S:- Wala na po.

21. T:- Handa mo bang lagdaan ang iyong salaysay na ito bilang patotoo sa katotohanan nito nang hindi ka pinilit, sinaktan or pinangakuan kaya ng anuman upang lumagda lamang?

S:- Opo.

WAKAS NG SALAYSAY: /ac

(Sgd.)

JOSE D. FILOTEO

MGA SAKSI SA LAGDA:

(Sgd.)

SSG ROMEO P. ESPERO PC

(Sgd.)

CIC THERESA TOLENTINO WAC (PC)"[24]

Petitioner executed two other documents on the same day, May 30, 1982. One was a certification stating that he voluntarily surrendered "voluminous assorted US checks and vouchers," that because of the "large number of pieces" of checks, he affixed his signature upon the middle portion of the back of each check "to serve as identification in the future, prior to the completion of its proper inventory and listing conducted by elements of SOG" in his presence, and that he "guided the elements of SOG" to the residence of Rodolfo C. Miranda, the owner of the sky-blue Mercedes Benz car which was surrendered to the SOG Headquarters.[25] The other document was a sworn statement wherein petitioner attested to his waiver of the provisions of Article 125 of the Revised Penal Code and the following facts: (a) that he was apprised of his constitutional rights under Section 20, Article IV of the (1973) Constitution, that he understood all his rights thereunder, and that the investigators offered him counsel from the CLAO-IBP but he refused to avail of the privilege; (b) that he was arrested by SOG men in his house at around 11:00 p.m. of May 29, 1982 "sa dahilang ako ay kasangkot sa pagnanakaw ng mga US Treasury Warrants, SSS Pension Checks and Vouchers at SSS Medicare Checks and Vouchers mula sa delivery van ng Philippine Mail;" (c) that the SOG men confiscated from him numerous checks and a Mercedes Benz 200 colored sky-blue, and (d) that he was not hurt or maltreated nor was anything taken from him which was not duly receipted for.[26]

As certified to by petitioner (in the above described document), he led the SOG operatives to the house of Rodolfo Miranda on Singalong where the latter admitted that petitioner was his friend. He denied, however, having

knowledge that his car was used in the hijacking until the authorities came to his house. According to Miranda, he was made to believe that his car would be used for surveillance purposes because petitioner's jeep was not available. The car was not returned until the evening following that when it was borrowed.[27] After the trip to Miranda's house, petitioner informed the investigators that some more checks could be recovered from his kumare. Said checks were retrieved and turned over to headquarters along with the car surrendered by Miranda who later executed a sworn statement dated May 31, 1992 at the SOG.[28]

Upon learning of the whereabouts of Miravalles, Eddie Saguindel and Bernardo Relator, the team of Capt. Ferrer proceeded to Taguig, Metro Manila in the afternoon of May 30, 1982. They met Miravalles along the way to his house. Informed by Capt. Ferrer that six of his companions were already under custody and that they implicated him as one of their confederates, Miravalles reacted by saying, "Sir, ang hihina kasi ng mga loob niyan, eh." [29]

Capt. Ferrer later asked Miravalles to bring him to Eddie Saguindel. At the barracks of the Long Range Patrol in Bicutan, Metro Manila, Saguindel voluntarily accepted the invitation to proceed to the SOG headquarters, after Miravalles initially informed him of the facts obtained during the investigation. Saguindel was heard saying, "Hindi na kami interesado, sir, sa mga tsekeng iyan kasi isang buwan na hindi pa nabebenta." [30] With Miravalles and Saguindel, Capt. Ferrer and his team moved on to Binondo, Manila to look for Bernardo Relator. When they found him at home, Relator excused himself, went upstairs, returned with a .32 caliber revolver with six bullets [31] and said, "Sir, ito yong baril na nagamit." [32] The three suspects were brought to Camp Crame for further investigation. Thereafter, Capt. Ferrer submitted an after-operations report about their mission and executed jointly with Lt. Pagdilao on affidavit on the same matter. [33]

Aside from petitioner, Liwanag, Mateo and Perez executed sworn statements. [34] Prior to doing so, they waived their right to counsel. Liwanag and Mateo admitted their participation and implicated petitioner in the crime. Perez, on the other hand, denied having driven a Lancer car in the hijacking and stated that he was implicated in the crime only because in one drinking spree with petitioner, Mateo and one alias "Buro" during that month of May, they had a heated altercation. Like petitioner, Liwanag and Mendoza certified that they voluntarily surrendered vouchers and checks which were part of their loot in the hijacking; they also executed waivers under Article 125 of the Revised Penal Code. For his part, Relator executed a certification to the effect that he voluntarily surrendered his .32 caliber Smith & Wesson service revolver used in the commission of the crime. In spite of the fact that his father-in-law was a lawyer, petitioner did not manifest that he needed the assistance of counsel. During the taking of his statement, petitioner was visited by Jimmy Victorino and another comrade from the General Assignment Section of the WPD.

For their part, Relator, Saguindel and Miravalles executed a joint affidavit [35] manifesting their option to avail of their right to remain silent until such time as they would have retained a counsel of their choice. Frias and Mendoza executed a similar joint affidavit. [36] Severino Castro, the postal employee implicated, also chose to remain silent as he wanted to testify in court. However, he linked to the crime a certain Gerardo Escalada, a former clerk of the Central Post Office and son of a director of the Bureau of Posts in Region I. [37]

On May 31, 1982, then Postmaster General Golez summoned postal employees Miranda, Bautista and Tagudar and directed them to proceed to Camp Crame. At the office of the SOG, they were told to go over some pictures for identification of the culprits. The three recognized and pointed to the suspects in a line-up. Tagudar identified Saguindel and Liwanag. [38] Miranda pointed at Frias and Liwanag [39] while Bautista identified Frias, Mendoza and Liwanag. [40] Petitioner himself, when told to identify his alleged cohorts, pointed to Severino Castro as their contact at the post office. [41] Five of the suspects who were not identified in the line-up were however implicated by Liwanag, Mateo and petitioner.

SOG Chief Investigator Jorge C. Mercado filed a complaint for robbery-in-band (hijacking) before the Municipal Court of Meycauyan, Bulacan against petitioner and ten (10) others, namely, Mateo, Saguindel, Relator, Miravalles, Perez, Frias, Mendoza, Liwanag, Castro and Escalada (Criminal Case No. 7885).[42]

On August 8, 1983, the Information previously referred to and aforequoted was filed with the Sandiganbayan and docketed as Criminal Case No. 8496.

On September 20, 1983, Sandiganbayan Associate Justice Romeo M. Escareal issued orders for the arrest of the accused[43] and fixed bail at P13,000.00 each. Saguindel and Relator filed a motion to quash the Information asserting that under the Articles of War and Section 1 of P.D. 1850, they should be tried by a court martial.[44] The Sandiganbayan denied the motion on January 3, 1984[45] on the ground that courts martial could no longer exercise jurisdiction over them by virtue of their separation from military service.

Evidence for the Defense

Testifying in his own defense, petitioner alleged that as a patrolman since August 21, 1978 assigned to the Investigation Division or the Detective Bureau of the WPD to which the General Assignment Section belonged, he was the recipient of several awards and recognitions starting with ranking fifth in the Final Order of Merit in the basic course for police officers.[46] He also claimed to have received a loyalty medal for meritorious service above the call of duty[47] and several commendations[48] for the distinguished performance of his duties. On that fateful date of May 3, 1982, he was a member of the Special Task Force Unit covering the tourist belt area.

Of the ten other accused in this case, petitioner admitted knowing only Martin Mateo whose name appeared in the initial follow-up operation he allegedly participated in regarding a P250,000 qualified theft case on May 16, 1980 at the Shemberg Marketing Corporation.[49] Although a suspect, Mateo was not charged in the information subsequently filed in that case. Sometime in March 1981, Mateo visited petitioner at the police headquarters seeking assistance in his bid to lead a new life. Considering Mateo's familiarity with underworld characters, petitioner readily made him an informer who was paid from time to time out of the police intelligence fund. Mateo proved to be an effective informer. In fact, he allegedly supplied vital information on the identities and whereabouts of suspects in robbery cases at the La Elegancia Jewelry Store, at the Likha Antique and Crafts,[50] and in an alleged racket in Aranque Market in Manila involving jewelries.

As such informer, Mateo became accustomed to borrowing petitioner's owner-type jeep whenever he was given an assignment. In one instance however, petitioner saw Mateo using his jeep with some male companions. Because Mateo denied the occurrence of the incident, petitioner from then on refused to lend his jeep to Mateo. Instead, Mateo was given an allowance to cover his travelling expenses.

About a month prior to May 3, 1982, petitioner met Mateo and requested the latter to give him a good project as he was working for his transfer to the Metrocom Intelligence Security Group (MISG). On May 2, 1982, Mateo urged petitioner to lend him his jeep in order that he could follow-up a bank robbery case. That same evening, petitioner approached his kumpare, accused Rodolfo Miranda, to borrow the latter's old Mercedes Benz since, if the jeep was used, Mateo could be identified as an informer. Petitioner left his jeep with Miranda and "went around boasting of the Mercedes Benz." [51]

Mateo took the Benz in the morning of May 3, 1982. Petitioner advised him to return the car between the hours of two and three in the afternoon at the Lakan Beer House at the corner of Rizal Avenue and Zurbaran Streets in Sta. Cruz, Manila where petitioner was to meet his friend Manolo Almoguera who would be celebrating his birthday there. Petitioner met Almoguera and company at around 3:30 in the afternoon. He waited for Mateo until shortly before 5:00 in the afternoon when he was constrained to leave without seeing Mateo because he had to attend a mandatory regular troop formation at 5:00 P.M. at the police headquarters. From there, petitioner proceeded to his

area of responsibility in the tourist belt. He returned to the beer house at about 6:00 in the evening hoping to find Mateo and the automobile. A little before 8:00 o'clock, someone informed him that Mateo had finally arrived. Petitioner went out and scolded Mateo for being late; the latter apologized and said that his surveillance bore good results. Petitioner then returned the car to Miranda, through the latter's cousin.

At around 11:00 in the evening of May 29, 1982, Mateo, escorted by a group of military men, went to petitioner's house at 810 Cabezas St., Tondo, Manila. The group refused to give any reason for their visit but arrested him. Wearing only short pants, petitioner was made to board a car where he was handcuffed. The men asked him about the Benz and the identities of his companions in an alleged hijacking incident. Petitioner admitted having knowledge of the exact location of the car but denied participation in the crime. Nobody apprised him of his constitutional rights to remain silent and to be assisted by counsel.[52]

Petitioner was then instructed to accompany Lt. Pagdilao to the residence of Miranda to get the Benz. They were on board two cars. When petitioner noticed that they were not heading for Miranda's place, he clutched the hand of Lt. Pagdilao, pleading for pity and thinking that he was about to be "salvaged". Lt. Pagdilao however informed him that they would be dropping by petitioner's house first per the investigator's information that more checks could be recovered thereat. A warrantless search was then allegedly conducted in petitioner's house but nothing was found. Suddenly, someone from the other car came out of a nearby house owned by Mateo and reported that they had recovered some checks. Thereafter, they proceeded to the house of Miranda who was also invited for questioning. The latter surrendered his Benz to the group.

At the SOG headquarters in Camp Crame, petitioner repeatedly coaxed to admit participation in the hijacking. As he vehemently denied the accusation against him, someone blindfolded him from behind, led him outside and loaded him in a car. He was taken to an unidentified place and made to lie flat on his back. An object was tied to his small finger to electrocute him. While a wet handkerchief was stuffed in his mouth, someone mounted his chest and applied the "water cure" ("tinutubig") through his nose. Because these ordeals were simultaneously carried out, petitioner felt unbearable pain. He sought permission to get in touch with his father-in-law, Atty. Felix Rosacia, but his request was denied. They urged him to cooperate otherwise something terrible would happen to him.

Meanwhile, petitioner's wife reported to the WPD General Assignment Section her husband's forcible abduction by armed men whom she mistook for CIS agents. A check with the CIS yielded negative results. Thereafter, Lt. Reynaldo Dator went to the SOG where he was informed that petitioner was being investigated but no details were given thereon pending clearance with superior officers.[53] Consequently, a newspaper carried an item on the SOG's refusal to allow petitioner's co-police officers to see him in his detention cell.[54]

Among his comrades, only Jimmy Victorino, formerly of the WPD who was transferred to the SOG, was able to visit him. Petitioner revealed to Victorino the maltreatment done him but the latter expressed helplessness about it. In fact, Victorino advised him to just cooperate so that the SOG would not incriminate him ("para hindi ka pag-initan dito").[55] The advice came after petitioner was warned that he, like Pat. Serrano of the WPD, would be liquidated by the SOG,[56] should he refused to cooperate. Later, Mateo came to petitioner's cell and confided that he had been similarly maltreated and forced to implicate petitioner.

After Mateo left, a prepared statement was shown and read to petitioner. Because its contents were false, petitioner refused to sign it. Placing his arm around petitioner, a certain Capt. Lagman told petitioner that he thought they had an understanding already. Petitioner later discovered that Lagman was not member of the military but an "agent" of the SOG, and a member of the "Contreras gang". Petitioner was therefore constrained to sign the statement because of his excruciating experience ("hirap na hirap"). He however admitted having read the

document before affixing his signature thereto and initialing the corrections therein. The waiver under Article 125 of the Revised Penal Code and the certification he executed were allegedly also obtained by duress. Although he picked out one Severino Castro in a police line-up, he did not even know Castro. He implicated Castro because he was threatened by a certain Boy Zapanta.

Petitioner filed a complaint for grave coercion and maltreatment against Lt. Rosendo Ferrer and several John Does. On August 4, 1982, Asst. City Fiscal Emelita H. Garayblas recommended its dismissal for petitioner's failure to appear despite subpoenas and to answer clarificatory questions as well as to authenticate his statement.[57] However, petitioner swore that he never received the subpoenas.

Petitioner's alibi was supported by Manolo Almoguera whose birthday on May 3, 1995 was the reason for the celebration at the Lakan Beer House. While his baptismal certificate indicated that he was born on May 4, 1956,[58] a joint affidavit[59] also attested that his birth date was actually May 3, 1956. Gary Gallardo, the owner of the beer house, corroborated Almoguera's testimony as to petitioner's alleged presence during the birthday celebration.

The Respondent Court's Decision

On June 18, 1987, the Sandiganbayan rendered the herein questioned 51-page Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered finding accused Jose Filoteo, Jr. y Diendo, Martin Mateo, Jr. y Mijares, Bernardo Relator, Jr. y Retino and Eddie Saguindel y Pabinguit GUILTY as co-principals beyond reasonable doubt of the violation of Section 2 (e), in relation to Section 3 (b) of Presidential Decree No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974 and hereby sentences each of said accused to suffer the indeterminate penalty ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum, to THIRTEEN (13) YEARS, ONE (1) MONTH and ELEVEN (11) DAYS as maximum, both of reclusion temporal, and to pay their proportionate share of the costs of the action. Accused Danilo Miravalles y Marcelo is hereby acquitted, with costs de oficio, for insufficiency of evidence.

No civil indemnity is hereby awarded due to the complete dearth of any proof as to the actual damages suffered by the Bureau of Posts or the owners of the pilfered mail matters, and it further appearing that the mail van which was hijacked had been recovered, as well as most of the checks and warrants which were surrendered by some of the accused, without prejudice to the institution of the proper civil action to recover damages should proof thereof be available.

Consequently, it is hereby ordered that Exhibits B, B-1 and B-2, which are the .32 Cal. Revolver, Smith and Wesson, Serial No. 11707, its holster and six (6) live ammunition respectively, which were surrendered by accused Relator, and Exhibits J, J-1 to J-5, consisting of 187, 222, 215, 197, 194 and 22 pieces, respectively, of Social Security System and Medicare checks and vouchers, be returned to the Firearm and Explosive Unit (FEU), PC, Camp Crame, Quezon City and the Social Security System, respectively, upon proper receipts.

Let copies of this decision be furnished the Postmaster-General, Central Post Office, Liwasang Bonifacio, Metro Manila and the Commanding General and Chief, PC-INP, Camp Crame, Quezon City for their information and guidance with respect to the other accused who are still at-large.

SO ORDERED."

Petitioner's motion for reconsideration of said Decision was denied by the Sandiganbayan in its challenged Resolution of July 27, 1987. Hence, the instant alternative petition for certiorari and/or review on certiorari charging the Sandiganbayan with having gravely abused its discretion amounting to lack or excess of jurisdiction and with reversible error in arriving at said Decision.

The Issues

The amended petition raises the following:

"Assignments of Error

and / or

Excess of Jurisdiction / Grave Abuse of Discretion

x x x x x x x x

First

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction when it made its determination of the alleged guilt of petitioner on the basis of mere preponderance of evidence and not proof beyond reasonable doubt.

Second

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that petitioner's having borrowed the Mercedes Benz car utilized by the other accused in the hijacking of the mail van indubitably established his direct participation and/or indispensable cooperation in the said hijacking, the same being in gross disregard of basic Rules of Law.

Third

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that the voluminous SSS Medicare and Pension Checks were confiscated from and surrendered by petitioner and three of the other accused and in finding the testimonies and investigation reports relative thereto, 'credible and unrefuted', said findings being, insofar as petitioner is concerned, absolutely without any basis in the evidence and in fact contrary to the prosecution's only evidence that has some measure of competency and admissibility.

Fourth

The respondent court erred and gravely abused its discretion in finding that dorsal portions of the checks and warrants allegedly taken from petitioner were signed by him to indicate his admission of accountability therefor and that his signatures thereon confirm the confiscation from and/or surrender by him of said checks, said findings being absolutely without any support in the evidence.

Fifth

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in admitting and considering against petitioner his alleged extra judicial confession, despite petitioner's uncontradicted testimony and documentary proof that he was made to give or sign the same through torture, maltreatment, physical compulsion, threats and intimidation and without the presence and assistance of counsel, his request for which was refused, in gross violation of Constitutional Provisions and the prevailing jurisprudence.

Sixth

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that petitioner's participation in the hijacking of the mail van is indubitably established 'by the manner by which the SOG operatives succeeded in ferreting out the members of the hijacking syndicate one by one through patient sleuthing' and in finding that they did so 'without resorting to extra-legal measures' and that 'no evidence having been adduced to show that they were actuated by improper motives to testify falsely against the herein accused, then their testimonies should be accorded full credence'.

Seventh

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that 'even setting aside the inter-locking confessional statements of Filoteo, Mateo and Liwanag, x x x substantial and sufficient evidence exist which indubitably prove the guilt of Filoteo' (Petitioner).

Eight

Insofar as petitioner is concerned, the respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that 'accused Filoteo's (petitioner's) and Mateo's [alleged] unexplained possession of the stolen checks raised the presumption that 'they were responsible for the robbery in question', petitioner's alleged possession not being borne out but disputed by the prosecution's own evidence.

Ninth

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that 'accused Filoteo's denials and alibi cannot be entertained for being quite weak and implausible'. The truth of the matter being that they should have been sustained since petitioner was not identified by the direct victims-eyewitnesses as among those who participated in or were present at the hijack and none of the checks and treasury warrants were found in his possession or retrieved from him.

Tenth

The respondent court erred and gravely abused its discretion as well as exceeded its jurisdiction in finding that the participation of petitioner in the criminal conspiracy has been proven beyond reasonable doubt by the evidence of record and that said evidence 'not only confirms the conspiracy between [him and the other accused] as easily discernible from their conduct before, during and after the commission of the offense; but also their participation therein as co-principals by direct participation and/or indispensable cooperation'.

Eleventh

The respondent Court erred and gravely abused its discretion as well as exceeded its jurisdiction in cavalierly rejecting, through the use of pejorative words, and without stating the legal basis of such rejection, the various vital factual points raised by petitioner, in gross violation of the express mandate of the 1987 Constitution."

The Court believes that the above "errors" may be condensed into four:

- (1) Are the written statements, particularly the extra-judicial confession executed by the accused without the presence of his lawyer, admissible in evidence against him?
- (2) Were said statements obtained through torture, duress, maltreatment and intimidation and therefore illegal and inadmissible?
- (3) Was petitioner's warrantless arrest valid and proper?
- (4) Is the evidence of the prosecution sufficient to find the petitioner guilty beyond reasonable doubt?

The Court's Ruling

Preliminary Issue: Rule 45 or Rule 65?

Before ruling on the foregoing issues, it is necessary to dwell on the procedural aspects of the case. Petitioner, a "segurista", opted to file an (amended) "alternative petition" for certiorari under Rule 65 and for review on certiorari under Rule 45 of the Rules of Court. We however hold that the instant petition must be considered as one for review on certiorari under Rule 45. In *Jariol, Jr. vs. Sandiganbayan*,^[60] this Court clearly ruled:

"Presidential Decree No. 1486, as amended by P.D. No. 1606, which created the Sandiganbayan, specified that

decisions and final orders of the Sandiganbayan shall be subject to review on certiorari by this Court in accordance with Rule 45 of the Rules of Court. And Rule 45 of the Revised Rules of Court provides, in Section 2, that only questions of law may be raised in the Petition for Review and these must be distinctly set forth. Thus, in principle, findings of fact of the Sandiganbayan are not to be reviewed by this Court in a petition for review on certiorari. There are, of course, certain exceptions to this general principle. Here, reading petitioner's Petition for Review and Memorandum in the most favorable possible light, petitioner may be seen to be in effect asserting that the Sandiganbayan misapprehended certain (f)acts in arriving at its factual conclusions."

As amended by Republic Act No. 7975, Section 7 of P.D. No. 1606 expressly provides that "(d)ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court." However, in exceptional cases, this Court has taken cognizance of questions of fact in order to resolve legal issues, as where there was palpable error or grave misapprehension of facts by the lower court. Criminal cases elevated by convicted public officials from the Sandiganbayan deserve the same thorough treatment by this Court as criminal cases involving ordinary citizens simply because the constitutional presumption of innocence must be overcome by proof beyond reasonable doubt. In all criminal cases, a person's life and liberty are at stake.[61]

As a petition for review under Rule 45 is the available remedy, a petition for certiorari under Rule 65 would not prosper. Basic it is that certiorari is invocable only where there is no other plain, speedy or adequate remedy. For waffling on procedural matters, petitioner could have lost this battle through a summary dismissal of his "alternative" petition. But in view of the importance of the issues raised, the Court decided to take cognizance of the matter.

First Issue: Uncounselled Waiver

On the merits of the petition, we find that the pivotal issue here is the admissibility of petitioner's extrajudicial confession which lays out in detail his complicity in the crime. Petitioner contends that respondent Court erred in admitting his extrajudicial confession notwithstanding uncontradicted testimony and documentary proof that he was made to sign the same through torture, maltreatment, physical compulsion, threats and intimidation and without the presence and assistance of counsel. He also claims that in executing the extrajudicial confession, he was denied the right to counsel in the same way that his waiver of the said right was likewise without the benefit of counsel. Petitioner therefore questions the respondent Court's admission in evidence of his extrajudicial confession on the strength of cases[62] upholding the admissibility of extrajudicial confessions notwithstanding the absence of counsel "especially where the statements are replete with details and circumstances which are indicative of voluntariness." We shall first tackle the issue of his uncounselled waiver of his right to counsel.

The pertinent provision of Article IV, Section 20 of the 1973 Constitution reads as follows:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel and to be informed of such rights. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

In comparison, the relevant rights of an accused under Article III, Section 12 of the 1987 Constitution are, *inter alia*, as follows:

"(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices and their families." (underscoring supplied. Obviously, the 1973 Constitution did not contain the right against an uncounselled waiver of the right to counsel which is provided under paragraph 1, Section 12, Article III of the 1987 Constitution, above underscored.)

In the landmark case of *Magtoto vs. Manguera*,^[63] the Court categorically held that the aforementioned provisions of the 1973 Constitution (which were not included in the 1935 Charter) must be prospectively applied. This Court said:

"We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently, a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is admissible in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."

By parity of reasoning, the specific provision of the 1987 Constitution requiring that a waiver by an accused of his right to counsel during custodial investigation must be made with the assistance of counsel may not be applied retroactively or in cases where the extrajudicial confession was made prior to the effectivity of said Constitution. Accordingly, waivers of the right to counsel during custodial investigation without the benefit of counsel during the effectivity of the 1973 Constitution should, by such argumentation, be admissible. Although a number of cases held that extrajudicial confessions made while the 1973 Constitution was in force and effect, should have been made with the assistance of counsel,^[64] the definitive ruling was enunciated only on April 26, 1983 when this Court, through *Morales, Jr., vs. Enrile*,^[65] issued the guidelines to be observed by law enforcers during custodial investigation. The court specifically ruled that "(t)he right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel."^[66] Thereafter, in *People vs. Luvendino*,^[67] the Court through Mr. Justice Florentino P. Feliciano vigorously taught:

"x x x. The doctrine that an uncounseled waiver of the right to counsel is not to be given legal effect was initially a judge-made one and was first announced on 26 April 1983 in *Morales vs. Enrile* and reiterated on 20 March 1985 in *People vs. Galit*. x x x.

While the *Morales-Galit* doctrine eventually became part of Section 12(1) of the 1987 Constitution, that doctrine affords no comfort to appellant *Luvendino* for the requirements and restrictions outlined in *Morales* and *Galit* have no retroactive effect and do not reach waivers made prior to 26 April 1983 the date of promulgation of *Morales*."

Pursuant to the above doctrine, petitioner may not claim the benefits of the *Morales* and *Galit* rulings because he executed his extrajudicial confession and his waiver to the right to counsel on May 30, 1982, or before April 26, 1983. The prospective application of "judge-made" laws was underscored in *Co vs. Court of Appeals*^[68] where the Court ruled thru Chief Justice Andres R. Narvasa that in accordance with Article 8 of the Civil Code which

provides that "(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines," and Article 4 of the same Code which states that "(l)aws shall have no retroactive effect unless the contrary is provided," the principle of prospectivity of statutes, original or amendatory, shall apply to judicial decisions, which, although in themselves are not laws, are nevertheless evidence of what the law means.[69]

Petitioner's contention that Article III, Section 12 of the 1987 Constitution should be given retroactive effect for being favorable to him as an accused, cannot be sustained. While Article 22 of the Revised Penal Code provides that "(p)enal laws shall have a retroactive effect insofar as they favor the person guilty of a felony who is not a habitual criminal," what is being construed here is a constitutional provision specifically contained in the Bill of Rights which is obviously not a penal statute. A bill of rights is a declaration and enumeration of the individual rights and privileges which the Constitution is designed to protect against violations by the government, or by individuals or groups of individual. It is a charter of liberties for the individual and a limitation upon the power of the state.[70] Penal laws, on the other hand, strictly and properly are those imposing punishment for an offense committed against the state which the executive of the state has the power to pardon. In other words, a penal law denotes punishment imposed and enforced by the state for a crime or offense against its law.[71]

Hence, petitioner's vigorous reliance on *People vs. Sison*[72] to make his extrajudicial confession inadmissible is misplaced. In that case, the extrajudicial confession was executed on May 19, 1983, clearly after the promulgation of *Morales* on April 26, 1983.

The admissibility of petitioner's uncounselled waiver of the right to counsel notwithstanding, the Court has still to determine whether such waiver was made voluntarily and intelligently.[73] The waiver must also be categorical and definitive,[74] and must rest on clear evidence.[75]

In his affidavit of May 30, 1982 waiving the provisions of Article 125 of the Revised Penal Code,[76] petitioner stated that:

"x x x matapos akong mapagpaliwanagan ng mga imbestigador ng Special Operations Group, PC/INP Central Anti-Organized Crime Task Force, Camp Crame, Quezon City ng aking mga karapatan alinsunod sa mga isinasaad ng Section 20, Article IV ng Bagong Saligang Batas ng Republika ng Pilipinas ay malaya at kusang-loob na nagsasalaysay ng mga sumusunod kahit na walang abugadong magpapayo sa akin sa pagsasagawa nito sa dahilang alam at nauunawaan ko ang aking ginagawa at wala naman akong isasalaysay kung hindi mga katotohanan lamang, bagama't ako ay inalok ng mga imbestigador na ikuha ng isang abugadong walang bayad mula sa CLAO-IBP na akin namang tinanggihan:

x x x x x x x x;

Na ako ay hindi sinaktan o minaltrato gayunding walang kinuha mula sa akin na hindi niresibohan;

x x x x x x x x."

Sgt. Arsenio Carlos, investigating officer, testified that he apprised petitioner of his right to counsel even in waiving the same right[77] but petitioner did not even inform him that his father-in-law was a lawyer. Although allowed to talk for thirty minutes with Jimmy Victorino, who was his comrade at the WPD General Assignment Section,[78] still, petitioner did not invoke his right to counsel.

It should be emphasized that petitioner could not have been ignorant of his rights as an accused. He was a fourth year criminology student and a topnotch student in the police basic course.[79] Having been in the police force since 1978, with stints at the investigation division or the detective bureau, he knew the tactics used by investigators to incriminate criminal suspects.[80] in other words, he was knowledgeable on the matter of

extrajudicial confessions.

The Second Issue: Confession Extracted Through Torture?

Petitioner's claim that he was tortured into signing the confession appears incredible, or at least susceptible to serious doubts. The allegation of torture was negated by the medical report[81] showing no evidence of physical injuries upon his person. As correctly observed by the Solicitor General, there is no reason to maltreat him in particular when the record shows that the investigating team respected the right of the other suspects to remain silent. When he was presented before Judge Mariano Mendieta of the municipal court in Meycauayan, petitioner even waived his right to present evidence[82] instead of impugning his confession on account of the torture allegedly inflicted upon him. If indeed he had been tortured, he would have revived the case he filed against his alleged torturers upon learning of its dismissal.

Furthermore, an examination of his signatures in the different documents on record bearing the same discloses an evenness of lines and strokes in his penmanship which is markedly consistent in his certification, extrajudicial confession and waiver of detention. Human experience has proven that the lines and strokes of a person's handwriting reflect his disposition at a certain given time. In the present case, no handwriting expert is needed to declare that petitioner's signatures were written voluntarily and not under compulsion of fear immediately after he had been subjected to maltreatment. In view of the foregoing, his extrajudicial confession is presumed to have been voluntarily made, in the absence of conclusive evidence showing that petitioner's consent in executing the same had been vitiated.[83]

Besides, the question of whether petitioner was indeed subjected to torture or maltreatment is a factual question addressed primarily to trial courts, the findings of which are binding on this Court whose function, as afore-discussed, is principally to review only of questions of law. Moreover, we have pored over the assailed Decision and we are satisfied that respondent Court performed its duty in evaluating the evidence. More on this later.

The Third Issue: Illegal Arrest?

Petitioner questions the manner of his arrest, stating that the arresting officers "invited" him without a warrant of arrest and brought him to Camp Crame where he was allegedly subjected to torture almost a month after the commission of the crime.[84] Petitioner's claim is belatedly made. He should have questioned the validity of his arrest before he entered his plea in the trial court. On this point, this Court explained in *People vs. Lopez, Jr.*:[85]

"Finally, it is much too late for appellant to raise the question of his arrest without a warrant. When accused-appellant was arrested and a case was filed against him, he pleaded not guilty upon arraignment, participated in the trial and presented his evidence. Appellant is thus estopped from questioning the legality of his arrest. It is well-settled that any objection involving a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. Besides, this issue is being raised for the first time by appellant. He did not move for the quashal of the information before the trial court on this ground. Consequently, any irregularity attendant to his arrest, if any, was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and by participating in the trial. Moreover, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error."

The only move petitioner made in regard to his arrest was to file a complaint for "grave coercion, grave threat & maltreatment" which was docketed as I.S. No. 82-12684 before the Fiscal's Office of Quezon City.[86] The complaint was an offshoot of his alleged maltreatment in the hands of the SOG upon his arrest. However, as stated above, he did not lift a finger to revive it upon its dismissal.

The Fourth Issue: Sufficiency of the Prosecution's Evidence

Contrary to petitioner's claim, his culpability has been proven beyond reasonable doubt. He borrowed a car to use in the hijacking knowing fully well that his owner-type jeep would give away his identity. He could not be identified by the postal employees in the postal van simply because after overtaking said vehicle and forcing its driver to pull over, he gave up driving the Mercedes Benz where the postal employees were made to ride, and commandeered the van. That the checks were not found in his own home is of no moment. Before the arrest and upon learning that the authorities had begun to nail down the identities of the malefactors, he had entrusted them to his "kumare". It was petitioner himself who led the team of Lt. Pagdilao back to his place after he had admitted to Sgt. Arsenio Carlos that his share of the checks were in the possession of his "kumare" in the neighborhood.[87]

In view of these facts, it is beyond dispute that petitioner was a direct participant in the commission of the crime. His alibi has been correctly considered by the Sandiganbayan to be weak and implausible. The distance between Kalvario, Meycauayan, Bulacan and downtown Manila where petitioner claimed to have been at the crucial time was between fifteen (15) to twenty (20) kilometers, which, through first-class roads, could be negotiated during that time in approximately thirty (30) minutes. It could not therefore have been physically impossible for him to be at the crime scene or its immediate vicinity when the crime was committed.[88]

Having already ruled on the admissibility of petitioner's confession, this Court holds that the full force of the totality of the prosecution's evidence proves his guilt well beyond reasonable doubt. Weighing heavily against the defense is the well-settled doctrine that findings of facts of the trial courts -- in this case, the Sandiganbayan itself -- particularly in the assessment of the credibility of witnesses, is binding upon this Court, absent any arbitrariness, abuse or palpable error.

"x x x It is well-settled that this Court will not interfere with the judgment of the trial court in passing on the credibility of the witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial." [89]

"The doctrine is firmly settled that the trial court's conclusion on issues of credibility is accorded with highest respect by the appellate courts (People vs. Dominguez, 217 SCRA 170). Appellate courts will generally respect the findings of trial courts on the credibility of witnesses since trial courts are in a better position to weigh conflicting testimonies. They heard the witnesses themselves and observed their deportment and manner of testifying. x x x." [90]

So overwhelming is the prosecution's evidence that respondent Court opined that even without the "inter-locking confessions of Filoteo, Mateo and Liwanag" the remaining evidence would still be sufficient for conviction.[91] Said the respondent tribunal:

"However, even setting aside the inter-locking confessional statements of Filoteo, Mateo and Liwanag, we are of the considered opinion that substantial and sufficient evidence exist which indubitably prove the guilt of Filoteo, Relator, Mateo and Saguindel who had submitted themselves to the jurisdiction of this Court. As above-stated, Filoteo was responsible for securing the use of the Mercedes Benz car used by the co-conspirators in the hi-jacking. Together with Mateo, Liwanag and Mendoza, he surrendered voluminous assorted checks which were part of the loot. Relator admitted that his service firearm was used by him in the hi-jacking, which firearm was identified by prosecution witnesses Miranda and Bautista. Saguindel was identified in line-ups at the SOG office as the suspect clad in fatigue uniform and carrying an Armalite rifle by prosecution witnesses Tagudar and Bautista. All three (3) accused, namely, Mateo, Relator and Saguindel also jumped bail during the trial and did not offer any evidence to refute the evidence presented by the prosecution

against them. Such flight to evade prosecution constitutes an implied admission of guilt.

Moreover, accused Filoteo's and Mateo's unexplained possession of the stolen checks raises the presumption that they were responsible for the robbery in question. It is a rule established by an abundance of jurisprudence that when stolen property is found in the possession of one, not the owner, without a satisfactory explanation of his possession, he will be presumed the thief. This rule is in accordance with the disputable presumption "that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act." In the instant case, said accused has not given such satisfactory explanation, much more so when their possession had been positively established by the testimonies of prosecution witnesses Capt. Ferrer and Sgt. Carlos and by accused's own signatures at the back of said checks.

Furthermore, accused Filoteo's denials and alibi cannot be entertained for being quite weak and implausible. His claim that he merely borrowed the Mercedes Benz car from Rodolfo Miranda to help out his co-accused Mateo, who had been utilized by the police as an "informer" and was following up tips in certain unsolved cases, appears to be incredible and fantastic. He also claimed that he could not have participated in the hi-jack because after giving the car to Mateo in the morning of May 2, 1982, he waited at the corner of Zurbaran St. and Avenida Rizal between 2-3:00 o'clock p.m. of the same day and then went to the WPD headquarters to attend the police formation at around 5:00 o'clock p.m. when Mateo failed to show up. Thereafter, he tried to show through his witnesses Gary Gallardo and Manolo Almogera that he was with them between 3:00 o'clock to 4:45 o'clock p.m., then from 6:00 o'clock to 8:30 o'clock p.m. and, finally, from 10:45 o'clock p.m. to 11:00 o'clock of the same date. It was through said witnesses that he tried to establish his whereabouts between 4:30 o'clock to 7:30 o'clock p.m. of May 2, 1982, the period from the time the mail van was hi-jacked up to when postal employees Bautista, Miranda and Tagudar were brought to Caloocan City and freed by their captors. Such alibi, however, fails to show that it was physically impossible for him to be present at the scene of the hi-jacking. We take judicial notice that the distance between the crime scene and downtown Manila is some 15-20 kilometers and negotiable over first-class roads in some thirty (30) minutes."

We are likewise convinced that there is sufficient evidence of conspiracy as convincing as the evidence of the participation of each of the accused. As ratiocinated in the assailed Decision:[92]

"The participation of accused Filoteo, Mateo, Relator and Saguindel in the criminal conspiracy have (sic) been proved beyond reasonable doubt by the evidence on record and which evidence not only confirms the existence of the conspiracy between them as easily discernible from their conduct before, during and after the commission of the offense, but also their participation therein as co-principals by direct participation and/or indispensable cooperation. Their concerted efforts were performed with closeness and coordination indicating their common purpose. Hence, there being collective criminal responsibility, the act of one is the act of all, and each of the participants are responsible for what the others did in all the stages of execution of the offense."

Final Question: Brigandage or Robbery?

The Court believes that, though not raised as an issue and though not argued by the parties in their pleadings, the question of which law was violated by the accused should be discussed and passed upon. In fact, petitioner should have brought up such question as it may benefit him with a reduced penalty.

The respondent Court convicted the accused of brigandage punishable under Presidential Decree No. 532.[93]

Justifying the above disposition, the assailed Decision ratiocinates:

"Accused herein are charged with the violation of Presidential Decree No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974. Under said decree, with respect to the highway robbery aspect, the offense is committed on a "Philippine Highway" which under Section 2 (c) thereof has been defined as "any road, street, passage, highway and bridges or any part thereof, or railway or railroad within the Philippines, used by persons or vehicles, or locomotives or trains for the movement or circulation of persons or

transportation of goods, articles or property or both", while under Section 2 (e) thereof "Highway Robbery/Brigandage" has been defined as the "the seizure of any person for ransom, extortion or other unlawful purposes or the taking away of property of another by means of violence against or intimidation of persons nor force upon things or other unlawful means, committed by any person on any Philippine Highway". (Underscoring supplied)

The offense described in the information and established by the evidence presented by the prosecution properly falls within the ambit of the aforesaid special law. Therein, it was conclusively proven that a postal van containing mail matters, including checks and warrants, was hi-jacked along the national highway in Bulacan by the accused, with the attendant use of force, violence and intimidation against the three (3) postal employees who were occupants thereof, resulting in the unlawful taking and asportation of the entire van and its contents consisting of mail matters. Also the evidence further showed that the crime was committed by the accused who were PC soldiers, policeman (sic) and private individuals in conspiracy with their co-accused Castro and Escalada who were postal employees and who participated in the planning of the crime. Accordingly, all the essential requisites to constitute a consummated offense under the law in point are present." (Underscoring in the original text.)

Obviously, the Court a quo labored under the belief that because the taking or robbery was perpetrated on a national highway (McArthur Highway), ergo, Presidential Decree No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974, must have been the statute violated. Such reasoning has already been debunked by this Court in the case of *People vs. Isabelo Puno*,^[94] where it was ruled in unmistakable language that it takes more than the situs of the robbery to bring it within the ambit of PD 532. Said the Court through Mr. Justice Florenz D. Regalado:

"The following salient distinctions between brigandage and robbery are succinctly explained in a treatise on the subject and are of continuing validity:

‘The main object of the Brigandage Law is to prevent the formation of bands of robbers. The heart of the offense consists in the formation of a band by more than three armed persons for the purpose indicated in art. 306. Such formation is sufficient to constitute a violation of art. 306. It would not be necessary to show, in a prosecution under it, that a member or members of the band actually committed robbery or kidnapping or any other purpose attainable by violent means. The crime is proven when the organization and purpose of the band are shown to be such as are contemplated by art. 306. On the other hand, if robbery is committed by a band, whose members were not primarily organized for the purpose of committing robbery or kidnapping, etc., the crime would not be brigandage, but only robbery. Simply because robbery was committed by a band of more than three armed persons, it would not follow that it was committed by a band of brigands. In the Spanish text of art. 306, it is required that the band ‘sala a los campos para dedicarse a robar.’ (Italics ours.)

In fine, the purpose of brigandage, is inter alia, indiscriminate highway robbery. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants. The martial law legislator, in creating and promulgating Presidential Decree No. 532 for the objectives announced therein, could not have been unaware of that distinction and is presumed to have adopted the same, there being no indication to the contrary. This conclusion is buttressed by the rule on contemporaneous construction, since it is one drawn from the time when and the circumstances under which the decree to be construed originated. Contemporaneous exposition or construction is the best and strongest in the law.

Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways as defined therein, and not acts of robbery committed against only a predetermined or particular victim, is evident from the preambular clauses thereof, to wit:

"WHEREAS, reports from law-enforcement agencies reveal that lawless are still committing acts of

depredation upon the persons and properties of innocent and defenseless inhabitants who travel from one place to another, thereby disturbing the peace, order and tranquility of the nation and stunting the economic and social progress of the people:

"WHEREAS, such acts of depredations constitute x x x highway robbery/brigandage which are among the highest forms of lawlessness condemned by the penal statutes of all countries:

'WHEREAS, it is imperative that said lawless elements be discouraged from perpetrating such acts of depredations by imposing heavy penalty on the offenders, with the end in view of eliminating all obstacles to the economic, social, educational and community progress of the people; (Emphasis supplied.)

Indeed, it is hard to conceive of how a single act of robbery against a particular person chosen by the accused as their specific victim could be considered as committed on the "innocent and defenseless inhabitants who travel from one place to another," and which single act of depredation would be capable of "stunting the economic and social progress of the people" as to be considered "among the highest forms of lawlessness condemned by the penal statutes of all countries," and would accordingly constitute an obstacle "to the economic, social, educational and community progress of the people," such that said isolated act would constitute the highway robbery or brigandage contemplated and punished is said decree. This would be an exaggeration bordering on the ridiculous."

From the above, it is clear that a finding of brigandage or highway robbery involves not just the locus of the crime or the fact that more than three (3) persons perpetrated it. It is essential to prove that the outlaws were purposely organized not just for one act of robbery but for several indiscriminate commissions thereof. In the present case, there had been no evidence presented that the accused were a band of outlaws organized for the purpose of "depredation upon the persons and properties of innocent and defenseless inhabitants who travel from one place to another." What was duly proven in the present case is one isolated hijacking of a postal van. There was also no evidence of any previous attempts at similar robberies by the accused to show the "indiscriminate" commission thereof.[95]

Upon the other hand, the Information did not specifically mention P.D. 532.[96] The facts alleged therein and proven by the evidence constitute the offense of robbery defined in Art. 293 in relation to Art. 295 and punished by Art. 294, par. 5, all of the Revised Penal Code.[97] From the facts, it was duly proven that:

- * personal property (treasury warrants, checks, mail, van, tools, etc.)
- * belonging to another were
- * unlawfully taken by the accused
- * with intent to gain (animo lucrandi)
- * with intimidation against three persons (Art. 293)
- * in an uninhabited place, or
- * by an band, or
- * by attacking a moving motor vehicle
- * on a highway; and
- * the intimidation was made with the use of firearms (Art. 295)

Hence, the offender shall be punished by the maximum period of the penalty provided under paragraph 5 of Art. 294, which is, "prision correctional in its maximum period to prision mayor in its medium period".

Effectively, the penalty imposed by the Court a quo should be lightened. However, such lighter penalty shall benefit only herein petitioner and not his co-accused who did not contest or appeal the Sandiganbayan's Decision.

WHEREFORE, the petition is DENIED, but the first paragraph of the dispositive portion of the assailed Decision is partially MODIFIED to read as follows:

"WHEREFORE, judgment is hereby rendered finding accused Jose Filoteo, Jr. y Diendo GUILTY beyond reasonable doubt as co-principal in the crime of robbery as defined in Arts. 293 and 295 and penalized under Art. 294, paragraph 5, of the Revised Penal Code Code IMPOSING on him an indeterminate sentence of four (4) years and two (2) months of prision correctional, as minimum, to ten (10) years of prision mayor as maximum, and to pay his proportionate share of the costs of the action."

All other parts of the disposition are hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, and Torres, Jr., JJ., concur.

Mendoza, J., No part, being on official business abroad when this case was deliberated.

Hermosisima, Jr., J., No part, signatory to the appealed judgment.

[1] Rollo, pp. 17-67.

[2] Second Division, composed of J. Romeo M. Escareal, ponente, and JJ. Regino C. Hermosisima, Jr. and Augusto M. Amores, concurring.

[3] Rollo, pp. 69-70.

[4] Sandiganbayan Decision, pp. 2-3; rollo, pp. 18-19.

[5] Sandiganbayan Decision, pp. 3-4; rollo, pp. 19-20.

[6] Sandiganbayan Decision, p. 5; rollo p. 21.

6-a At the time of the incident, Pagdilao was a lieutenant, but when he testified at the trial, he had already been promoted to captain.

[7] Exhs. E, E-1 and E-2.

[8] Exhs. E-3.

[9] Exhs. G, G-1, G-2 and G-3.

[10] TSN, June 21, 1984, p. 19.

[11] TSN, August 29, 1985, p. 13.

[12] TSN, June 21, 1984, p. 19.

[13] TSN, August 29, 1985, p. 13.

[14] TSN, August 29, 1985, p. 20.

[15] TSN, June 21, 1984, p. 22.

[16] Exhs. G to G-3.

- [17] Exhs. D to D-4.
- [18] Exh. A-3.
- [19] TSN, July 30, 1986, p. 30.
- [20] Exh. A-29-a.
- [21] TSN, August 6, 1984, p. 12.
- [22] TSN, July 30, 1986, p. 36.
- [23] Ibid., pp. 33 & 35.
- [24] Exh. A-16.
- [25] Exh. A-17.
- [26] Exh. A-18.
- [27] TSN, June 22, 1984, pp. 18-19.
- [28] Exh. A-9-a.
- [29] TSN, August 6, 1984, p. 15.
- [30] TSN, August 6, 1984, p. 16.
- [31] Exhs. B, B-1 and B-2.
- [32] TSN, August 6, 1984, p. 17.
- [33] Exh. A-10.
- [34] Exhs. A-12. A-11 and A-24a.
- [35] Exh. A-20.
- [36] Exh. A-22.
- [37] Exh. A-19.
- [38] Exhs. A-5b & A-5c.
- [39] Exhs. A-4b & A-4c.
- [40] Exhs. A-6b, A-6c & A-6d.
- [41] Exh. A-27a.
- [42] Record, Vol. I, p. 1.
- [43] Sandiganbayan Records, Vol. I, pp. 11-12.
- [44] Ibid., pp. 29-39.
- [45] Ibid., pp. 71-77.
- [46] Exh. 11-A for Filoteo.
- [47] Exh. 11-B for Filoteo.

[48] Exhs. 11-C, 11-D, 11-E, 11-F & 11-G for Filoteo.

[49] Exhs. 1, 1-A, 1-B, 1-D, 1-F & 1-G for Filoteo.

[50] Exh. 4 for Filoteo.

[51] TSN, September 11, 1986, p. 29.

[52] Ibid., p. 44.

[53] Exh. 8 for Filoteo.

[54] Exh. 9 for Filoteo.

[55] TSN, September 12, 1986, p. 6.

[56] Exh. 10 for Filoteo.

[57] Exhs. 12-B & 12-C for Filoteo.

[58] Exh. 13 for Filoteo.

[59] Exh. 13-A for Filoteo.

[60] 188 SCRA 475, 482-483, August 13, 1990.

[61] Worth quoting is the concurring and dissenting opinion of then Associate Justice Felix V. Makasiar in *Nuñez vs. Sandiganbayan*, (111 SCRA 433, January 30, 1982) where the constitutionality of P.D. No. 1606 was raised and where the majority opinion stated that the law could stand improvement ("It is true that other Sections of the Decree could have been worded to avoid any constitutional objection"). Justice Makasiar said:

"3. Limiting the power of review by the Supreme Court of convictions by the Sandiganbayan only to issues of jurisdiction or grave abuse of discretion, likewise violates the constitutional presumption of innocence of the accused, which presumption can only be overcome by proof beyond reasonable doubt (Sec. 19, Art. IV, 1973 Constitution).

Even if in certiorari proceedings, the Supreme Court, to determine whether the trial court gravely abused its discretion, can inquire into whether the judgment of the Sandiganbayan is supported by the substantial evidence, the presumption of innocence is still violated; because proof beyond reasonable doubt cannot be equated with substantial evidence. Because the Supreme Court under P.D. No. 1606 is precluded from reviewing questions of fact and the evidence submitted before the Sandiganbayan, the Supreme Court is thereby deprived of the constitutional power to determine whether the guilt of the accused has been established by proof beyond reasonable doubt -- by proof generating moral certainty as to his culpability -- and therefore subverts the constitutional presumption of innocence in his favor which is enjoyed by all other defendants in other criminal cases, including defendants accused of only light felonies, which are less serious than graft and corruption." (Ibid., p. 460).

[62] Respondent Court cited the cases of *People vs. Nillos*, 127 SCRA 207, January 30, 1984; *People vs. Villanueva*, 128 SCRA 488, April 2, 1984; *People vs. Urgel*, 134 SCRA 483, February 25, 1985; *People vs. Toledo*, 140 SCRA 259, November 22, 1985; *People vs. Ochavido*, 142 SCRA 193, May 30, 1986; *People vs. Banaan*, 142 SCRA 410, July 2, 1986; *People vs. Jumadiao*, 143 SCRA 371, August 12, 1986; *People vs. Aguirre*, 143 SCRA 572, August 19, 1986 and *People vs. Pia*, 145 SCRA 581, November 14, 1986. (Decision, p. 36).

[63] 63 SCRA 4, 12, March 3, 1975.

[64] Some of the cases are: *People vs. Ampo-an*, 187 SCRA 173, 188, July 4, 1990; *People vs. Decierdo*, 149 SCRA 496, May 7, 1987; *People vs. Jara*, 144 SCRA 516, September 30, 1986; *People vs. Poyos*, 143 SCRA 542, August 19, 1986 and *People vs. Duero*, 191 Phil. 679 [1981].

[65] 121 SCRA 538, 554, April 26, 1983.

[66] In regard to custodial investigations, *Morales, Jr. vs. Enrile* states:

"7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means -- by telephone if possible -- or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

[67] 211 SCRA 36, 49-50, July 3, 1992.

[68] 227 SCRA 444, 448-449, October 28, 1993.

[69] In the same case, the Court cited *People vs. Jabinal*, 55 SCRA 607, 612, February 27, 1974 where it was held that when a doctrine is overruled and a different view is adopted, the new doctrine should not apply to parties who had relied on the old doctrine and acted on the faith thereof, especially in the construction and application of criminal laws where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society. The Court also cited *Benzonan vs. Court of Appeals*, 205 SCRA 515, January 27, 1992, where it was held that while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that laws shall have no retroactive effect unless the contrary is provided or, as expressed in the familiar legal maxim, *lex prospicit, non respicit*.

[70] De Leon, *Philippine Constitutional Law*, 1991 ed., p. 137, citing 1 Cooley, *Constitutional Limitations*, 8th ed., pp. 534-535 and 3 Black, *Constitutional Law*, 3rd ed., pp. 9-10.

[71] Dissent of Malcolm, J. in *People vs. Moran*, 44 Phil. 387, 429 (1923).

[72] 142 SCRA 219, May 30, 1986.

[73] *People vs. Luvendino*, *supra*, at p. 53.

[74] *People vs. Poyos*, *supra*, at p. 549.

[75] *People vs. Decierdo*, *supra*.

[76] Exh. A-18.

[77] TSN, October 14, 1985, p. 12.

[78] *Ibid.*, p. 14.

[79] He later finished the course in law and is now waiting to be allowed to take the Bar Exams. (Rollo, p. 303).

[80] TSN, September 12, 1986, p. 25.

[81] Exh. A-30.

[82] Exh. A-31.

[83] *People vs. Nimo*, 227 SCRA 69, 84, October 5, 1993, citing *People vs. Luvendino*, *supra*.

[84] Amended Petition, p. 25.

[85] 245 SCRA 95, 105-106, June 16, 1995.

[86] Exh. 12.

[87] TSN, October 14, 1985, pp. 28-30; TSN, July 30, 1986, p. 33.

[88] *People vs. Lopez*, 249 SCRA 610, 621, October 30, 1995; *People vs. Lazaro*, 249 SCRA 234, October 12, 1995.

[89] *People vs. Dismuke*, 234 SCRA 51, 58, July 11, 1994.

[90] *People vs. Padre-e*, 249 SCRA 422, 431, October 24, 1995.

[91] Sandiganbayan Decision, pp. 38-41; rollo, pp. 54-57.

[92] Page 47; rollo p. 63.

[93] See assailed Decision pp. 49-51; rollo, pp. 65-67.

[94] 219 SCRA 85, 96-98, February 17, 1993.

[95] *People vs. Romeo Mendoza*, G.R. No. 104401, February 23, 1996.

[96] This is not to say that in interpreting informations the designation is controlling. In fact, it is the description of the offense charged, not the designation, that controls. See *People vs. Aczon*, 225 SCRA 327, August 10, 1993; *Odon Pecho vs. People of the Philippines*, G.R. No. 111399, September 27, 1996..

[97] Arts. 293, 294 and 295 of the Revised Penal Code reads as follows:

Art. 293. Who are guilty of robbery. -- Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

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 from reclusion perpetua to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed;

2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of article 263 shall have been inflicted; Provided, however, That when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death. (As amended by P.D. No. 767, August 15, 1975)

3. The penalty of reclusion temporal, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted,

4. The penalty of prision mayor in its maximum period to reclusion temporal in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said article 263,

5. The penalty of prision correctional in its maximum period to prision mayor in its medium period in other cases. (As amended by Republic Act No. 18)

Art. 295. Robbery with Physical Injuries, committed in an uninhabited place and by a band, or with the use of firearms on a street, road or alley. -- If the offenses mentioned in subdivisions 3, 4, and 5 of the next preceding article shall have been committed in an uninhabited place or by a band or by attacking a moving train, streetcar, motor vehicle or airship, or by entering the passenger's compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties. (As amended by Republic Act No. 12, sec. 2. And Republic Act No. 373)"

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