

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN HATTON, DEFENDANT-APPELLANT.

G.R. No. 85043. June 16, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Accused-appellant, Glenn Hatton, was charged with the crime of murder, for the death of one Faustino Algarme, in a complaint signed by P/Cpl. Jose C. Custorio of the Catarman Police Station. The complaint read as follows:

"That on or about the 29th day of August, 1986 at about 7:30 in the evening, more or less, in the municipality of Catarman, province of Northern Samar, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused armed with a knife commonly known as 'Dipang' with intent to kill thru treachery and evident premeditation, without any provocation and justifiable motive, did then and there wilfully, unlawfully and feloniously attack, assault and stab one FAUSTINO ALGARME with the knife he provided himself for the purpose hitting him at the back and inflicting upon him mortal wound which wound caused his death.

"CONTRARY TO LAW." (p. 1. Records)

Upon arraignment, accused-appellant, duly assisted by his counsel pleaded, not guilty to the charge (p. 65, Records).

According to the principal witnesses for the prosecution, Edgardo Ongue and Romeo Basierto, the incidents surrounding the death of Algarme were as follows:

The town of Catarman, Northern Samar was celebrating its fiesta on that day of August 29, 1986. The victim, Faustino Algarme and three (3) of his friends, namely: Jesus Aboda, Romeo Basierto and witness Edgardo Ongue were on their way to the house of Engr. Corbillo after drinking two (2) bottles of beer each at Aileen's Restaurant. The group walked abreast Algarme, who was on the extreme left at the edge of Bonifacio street, with Ongue, Basierto and Aboda, in that order, to his right. It was about seven (7) o'clock in the evening. When they neared the CLAO office, they noticed two (2) men coming towards their direction. One was short and stocky and the other was tall. While the tall man was one step behind them, he tapped the shoulder of Faustino Algarme with his left hand and stabbed him with his right hand. Algarme shouted for help and called "Romy (Basierto), please help me I was struck." At that moment, Ongue gazed at the tall man who tried to pull back the knife from the victim's back. Ongue did not know the man who stabbed Algarme, but he took notice of his mestizo features. The tall man failed to get the knife. Then he ran towards the corner of a house owned by Nonong Hatton, (TSN, April 28, 1987, pp. 2-8).

Another witness for the prosecution, Romeo Basierto testified that as soon as the tall man stabbed Algarme, he ran and Basierto chased him (p. 11, TSN, May 26, 1987). Basierto recognized the tall man who stabbed Algarme when the latter turned his face towards him (p. 21, TSN, May 26, 1987). He recognized the accused because both of them were residents of Catarman.

Edgardo Ongue brought the victim to the hospital where he died of "massive hemorrhage secondary to stab wound (Exh. "H"). Meanwhile, Basierto reported the incident to the police headquarters. Three policemen, one of whom was identified as Titing Varela, accompanied him to the scene of the crime where they beamed their flashlights towards the house of Nonong Hatton where he believed the tall man and his companion entered (p. 12, TSN, May 26, 1987).

According to Ongue, the day after the incident when he went to the police station to shed light on the incident, he narrated to the police officers what really transpired. He told them that the features of the assailant was still in his memory and that if they can show or present a person who will fit his description, he can identify him. He waited at the police station from 8:00 to 11:00 o'clock but the police failed to present any person to him. On the second day after the incident, he was picked-up from his office and made to identify their suspect who turned out to be the accused-appellant. The latter was sitting on a bench in the police station and a policeman pointed to him as their suspect. (pp. 24-26, TSN, April 28, 1987).

The accused-appellant interposed the defense of alibi. He testified that on that same night, from 6:00 p.m. to 10:30 p.m., he was in the house of his friend Eddie Laguitan. They were joined by their friends Eric Parnam, Edgar Maningcay, Marlon Acibar, Jaime Mijares and a girl named Imelda. Since it was the town fiesta and the baptism of the niece of Eddie Laguitan, they were invited by Eddie for some snacks and drinks. During the entire period, he got up only twice to go to the comfort room. His testimony was corroborated by Mrs. Laguitan, Eddie's mother, who served them, and another person who was with the group, Jaime Mijares.

The accused-appellant denied having stabbed the victim. He categorically stated also that he was left-handed.

After trial, judgment was rendered finding the accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of which the decision states:

"WHEREFORE, the court hereby finds the accused Glenn Hatton GUILTY beyond reasonable doubt of the crime of murder, defined and penalized under Article 248, paragraph 1, of the Revised Penal Code. There being neither in attendance mitigating nor aggravating circumstance, said accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of Faustino Algame in the amount of P30,000.00 including the amount of P10,000.00, hospitalization and burial expenses, and to pay the costs.

"The knife, Exh. 'C,' is hereby ordered confiscated, to be disposed of in accordance with regulations.

"SO ORDERED." (p. 111, Records)

From the judgment of conviction, accused--appellant filed this appeal.

In his brief, the following issues were raised by him in the assignment of errors:

"I. The accused-appellant was condemned before he was heard by a court that allied itself with the prosecution, in violation of the constitutional right to due process of law.

"II. The trial court erred in holding that the accused-appellant's being left-handed is a detail 'comparatively trivial and does not destroy the credibility of the witness or his testimony.'

"III. The trial court erred in holding the identification of the accused-appellant as the victim's attacker is positive and convincing considering that no courtroom identification was made, and the said identification was based solely on a pre--trial line-up of sorts, conducted in violation of the accused-appellant's right to counsel, and in a manner filled with innumerable 'suggestive influences.'

"IV. The lower court erred in not giving credence to the evidence presented by the accused-appellant.

"V. The lower court erred in holding that the accused-appellant is guilty beyond reasonable doubt." (pp. 6-7,

Appellant's Brief)

The accused-appellant objected to the conduct of the judge during trial. He alleged that the judge manifested bias and partiality in hearing the case. The judge allegedly asked leading questions and various points not asked by the fiscal when the prosecution presented its first witness. He practically took over the task of conducting the direct examination, asking fifty one (51) questions while the fiscal asked only a total of twenty-five (25) questions. The judge also asked another forty (40) questions during cross-examination and practically took over the task of re-direct examination. The same attitude was displayed by the judge during the entire trial of the case.

Likewise, the accused-appellant pointed out that after the direct examination of the first witness for the defense, Jaime Mijares, the judge took the task of conducting the cross-examination by asking fifty-nine (59) questions while the Fiscal only asked nine (9) questions.

We read the transcript of stenographic notes and indeed, it is true that the judge was overzealous in controlling the conduct of the hearing. He asked more questions than did counsel of the accused or the fiscal. It is conceded though that the trial judge did not manifest any bias in favor of the prosecution in asking the witnesses for the prosecution nor any hostility or malice against the defense witnesses. We note also that the questions asked by the court were clarificatory questions aimed to paint a clearer picture of what was testified to by the witnesses. As we held in *People v. Ibasan, Sr.* G.R. No. L-61652, June 22, 1984: 129 SCRA 695:

"x x x. It is not denied that the court had at certain points conducted its own questioning during the proceedings. The records, however, show that the court's questions did not amount to interference as to make the case for the prosecution and deprive the accused of their defense. The questions of the judge addressed to the witnesses and the accused were merely to clarify certain points and confirm certain statements. The number of times that a judge intervenes is not necessarily an indication of bias. It cannot be taken against a judge if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.

"As held in the case of *Ventura v. Yatco* (105 Phil. 287) 'Judges are not mere referees like those of a boxing bout, only to watch and decide the results of a game; they should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling attention of counsel to points at issue that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks by witnesses, etc.'

"A judge may properly intervene in the trial of a case to promote expedition and avoid unnecessary waste of time or to clear up some obscurity (*People v. Catindihan*, 97 SCRA 196; Par. 14 Canons of Judicial Ethics; Administrative Order No. 162 dated August 1, 1946, 42 O.G. 1803). In this respect, the record shows no irregularity in the conduct of the trial judge."

The counsel for the accused pointed out also that the decision was rendered by the judge on June 19, 1987 when it was only on June 29, 1987 when the accused-appellant and another witness for the defense, Jaime Mijares, was presented as a witness in court. This fact allegedly showed the bias of judge who already adjudged the accused guilty before hearing his defenses.

It appears from the record of this case that the decision was dated June 29, 1987. The transcript of stenographic notes showed, however, that the last hearing was conducted the next day, June 30, 1987. It appears to the court that the date appearing in the decision was only a typographical error. There was no irregularity in the promulgation of the decision. The record reveals that the promulgation of the decision was set on July 7, 1987 (p. 104, Record) after both parties submitted their respective testimonial and documentary evidence. Moreover, the decision reflected that the trial judge took into consideration the defense of the accused and the testimony of his witnesses in arriving at his decision.

After a careful study of the case, We hold that the judgment of conviction must be reversed.

First, the witness for the prosecution positively stated that the victim was stabbed with a knife using the right hand of the assailant. The accused-appellant on the other hand testified that he is left-handed. The accused-appellant takes exception to the finding of the trial court that:

"x x x. Even if such claim is true, it was not quite demonstrated that from the location of the wound, the relative positions of assailant and victim and the trajectory of the blow considering the internal organ pierced thereby, the injury could not have been inflicted by a right-handed person. It appears, however, that the location of the injury is compatible with the relative positions of the assailant and victim as established by the prosecution. At any rate, such detail is considered comparatively trivial and does not destroy the credibility of the witness or his testimony (People v. Pielago, 140 SCRA 418)." (p. 109, Records)

We are of the considered opinion that the matter of the accused-appellant being left-handed and the testimony of the prosecution witness that the assailant delivered the fatal blow with his right hand is not a trivial matter. A left-handed person cannot be expected to deliver a thrust with the same intensity using his right hand. The intensity of the blow can be deduced from the fact that the assailant failed to remove the knife after the thrust despite his attempt, as testified to by witness, Ongue (p. 7, TSN, April 28, 1987). In fact, the knife was deeply embedded with such force that it had to be removed in the hospital (p. 5, TSN, April 28, 1987). It is erroneous for the trial judge to conclude that there was no direct proof that from 'the location of the wound, the relative positions of assailant and victim and the trajectory of the blow considering the internal organ pierced thereby, the injury could not have been inflicted by a right-handed person.' What could be a more positive proof of this fact than the categorical statement of the prosecution witnesses who saw the incident and who categorically stated that the assailant delivered the fatal blow with his right hand. Is it unnatural for a left handed person to use his right hand in accomplishing a tough act as stabbing another. It is also hard to believe that the left handed assailant can deliver a stab blow with the same force as that of his right, as in this case.

Second, in People v. Llaneras, et al., G.R. No. 89117, June 19, 1991, We held that "(T)here is no law requiring a police line-up as essential to a proper identification (People v. Espiritu, G.R. No. 80406, November 20, 1990). Thus, even if there was no police line-up, there could still be proper identification as long as such identification was not suggested to the witnesses by the police."

The prosecution through witness Ongue, made it appear that the latter identified the accused-appellant in a police line-up. The details however, showed otherwise. On direct examination by the court, he said:

"COURT:

"Q: What time did you see him in the police station for that identification?

"A: In the morning, one day after the incident.

"Q: How many hours after the incident?

"A: I could not exactly remember the hours, Your Honor.

"Q: Was it the day after the incident?

"A: A day after the incident. Yes, Your Honor.

"Q: You mean to say it was the following morning that you saw him at the police station?

"A: Not exactly because the police was not able to bring him the following morning, it was the other day.

"Q: After the incident?

"A: Yes, Your Honor."

On cross-examination, the trial court propounded the following questions.

"COURT:

"Q: You said that you were able to recognize Glenn Hatton at the police station two mornings after the incident, did you not say so?

"A: Yes sir.

"Q: Why, what transpired at the police station when you went there? You relate to the court what procedure was followed by the police in your investigation and in your identification of Glenn Hatton, that is the point of the question?

"A: When I went to the police station to shed light of (sic) the incident I was made to tell on how the incident happened by the police who was assigned on us to ask questions and I narrated to them all what really had transpired and because of the feature that was in my memory about the person who struck the victim that night I was able to tell them that if they can show me or present to me person who will fit the same person in my memory I can identify and describe the assailant.

"Q: You mean to say you describe(d) the feature of the assailant to the police?

"A: Yes, sir.

"Q: Thereafter, what did the police do after you described the feature of the assailant?

"A: They said they have already some suspect in mind.

"Q: Did you know at the time that you were being investigated by the police that you knew already the suspect they had?

"A. At that time, not yet, your Honor.

"Q: Right after you described the feature of the assailant what did the police do?

"A: They begun hunting for their suspect.

"Q: How long did you stay inside the police station?

"A: I went there 8:00 o'clock in the morning and probably I was able to go back to the office around 11:00 o'clock already because it was already ready for dinner. (sic)

"Q: So that from. 8:00 to 11:00 o'clock in the morning that you were at the police station you were never confronted with the presence of the accused at the police station?

"A: Not yet, your Honor.

"Q: By the way, when was that investigation that you were made to relate to the police of what happened?

"A: Just after the incident the following morning. I could not exactly remember the date but it was the following morning after.

"Q: Alright, what transpired next in connection with this case after that investigation the following morning after the incident? What resulted in the investigation?

"A: When they were able to produce their suspect I was again picked up from the office and made to identify the person.

"Q: When was that when you were picked up from the office?

"A: It was two days after already.

"Q: Who picked you up?

"A: A policeman.

"Q: Where were you brought?

"A: To the police station.

"Q: The same police station where you narrated the incident?

"A: Yes, sir.

"Q: What transpired there at the police station this time?

"A: I told them that he is the same fellow.

"Q: You describe to the court what procedure was followed after you arrived at the police station?

"A: The accused Glenn Hatton was just sitting along the bench there and a policeman told me that he is their suspect and I immediately looked at him. Although he was wearing long sleeves polo at the time of the incident but I immediately identified him and told the police that he is really the one who stabbed the victim.

"Q: You mean to tell the court that you only identified the accused after the police indicated him to you to be one of their suspect?

"A: Yes, sir.

"Q: So you had no idea that he was the assailant before the police indicated him to you as one of their suspects?

"A: I had the idea of his feature only but not his name, but when he was presented to me for identification and looked at him it came into my memory that he really is the person who stabbed the victim that night. In other words, Your Honor, when I looked at him he fits the same feature to the person I saw that night.

"Q: Just before the police indicated him to you to be among the suspects you already saw him?

"A: During the incident I saw him.

"Q: During that morning just before the police pointed to you that he is one of the suspects you already saw him? In other words, that very morning before the police pointed him to you to be one of the suspects you already saw him?

"A: Not yet because there were many people sitting along the benches.

"Q: So before the police pointed him to you you had no idea that the assailant was one among those seated on the bench?

"A: Not yet, Your Honor, but when the police asked me to identify who among those persons seated on the bench and when looked at them I immediately identify the accused Glenn Hatton to be the person who stabbed Faustino Algarme that night.

"Q: How many persons were seated on the bench?

"A: I cannot exactly remember, Your Honor, but the bench is full of persons seated along the bench.

"Q: More or less, how many?

"A: About ten persons.

"Q: From among the ten persons seated on the bench the policeman indicated to you the accused?

"A: The police told me that among those persons seated at his right is one of their suspects, and I was made to identify the accused.

"Q: On that bench approximately were seated ten persons according to you?

"A: Yes, Your Honor.

"Q: How many persons bearing mestizo's feature seated on that bench where the accused also sat?

"A: Only one.

"Q: So it is now clear to the court that from these persons approximately 10 in number seated on that bench you were made to point out and identify the assailant of Faustino Algarme?

"A: Yes, Your Honor." (pp. 6-27, TSN, April 28, 1987). (underscoring ours).

There is every reason to doubt the regularity of the identification by Ongue of the accused-appellant. From his testimony, it is clear that he did not positively identify the accused-appellant. At the time of the incident he made a very fleeting glance on the person who stabbed the victim. At that moment, he had the impression that the assailant was a mestizo. During the proceedings in the police station where he was supposed to identify the assailant, he identified the accused-appellant as allegedly the person who stabbed the deceased, not because he was certain that the accused-appellant was really the assailant but because he was the only mestizo in the station and because he was pointed to the policemen as their suspect. The fact is that the accused-appellant was not identified in a police line-up. He was pointed to by the police as their suspect. He being the only mestizo in the station, Ongue pointed to him as "the man." From all indications, the identification of accused-appellant by Ongue was suggested by the police and this is objectionable. We quote hereunder a portion of the decision of the U.S. Supreme Court expressing its misgivings on the identification of a suspect in a police line-up where the influence of improper suggestion is strong.

"x x x. A major factor contributing to the high incidence of miscarriage of justice from mistaken identification has been the degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pre-trial identification. A commentator has observed that [t]he influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor-perhaps it is responsible for more such errors than all other factors combined. x x x. Suggestion can be created intentionally or unintentionally in many subtle ways. And the dangers for the suspect are particularly grave when the witness' opportunity for observation was insubstantial, and thus his susceptibility to suggestion the greatest.

"Moreover, '[i]t is a matter of common experience that, once a witness has picked out the accused at the line-up, he is not likely to go back on his word later on, so that in practice the issue of identity may (in the absence of other relevant evidence) for all practical purposes be determined there and then, before the trial.'

"x x x.

"What facts have been disclosed in specific cases about the conduct of pretrial confrontations for identification illustrate both the potential for substantial prejudice to the accused at that stage and the need for its revelation at trial. A commentator provides some striking examples:

"'In a Canadian case . . . the defendant had been picked out of a line-up of six men, of which he was the only

Oriental. In other cases, a black-haired suspect was placed among a group of light-haired persons, tall suspects have been made to stand with short non-suspects, and, in a case where the perpetrator of the crime was known to be a youth, a suspect under twenty was placed in a line-up with five other persons, all of whom were forty or over.'

"Similarly state reports, in the course of describing prior identifications admitted as evidence of guilt, reveal numerous instances of suggestive procedures, for example, that all in the line-up but the suspect were known to be identifying witness, that the other participants in a line-up were grossly dissimilar in appearance to the suspect, that only the suspect was required to wear distinctive clothing which the culprit allegedly wore, that the witness is told by the police that they have caught the culprit after which the defendant is brought before the witness alone or is viewed in jail, that the suspect is pointed out before or during a line-up, and that the participants in the line-up are asked to try on an article of clothing which fits only the suspect." (U.S. v. Wade, 388 U.S. 218; 18 L ed. 2d 1149. 87 S Ct. 1926).

Seeking shelter under the just quoted U.S. v. Wade case, the accused-appellant also argued that when he was presented in a line-up of sorts he was not represented by a counsel. This allegedly violates his constitutional right to counsel during custodial investigation.

This argument raised by appellant has no merit. The doctrine enunciated in the case of U.S. v. Wade is that the presence of counsel is indispensable in a post-indictment line-up. In that case, the accused had already been arrested and a lawyer already appointed to represent him. It was fifteen days after his arrest and the appointment of a lawyer to represent him when he was presented in a police line-up to be identified by the prosecution witness. There was no doubt that Wade in that case was already under custodial investigation where his right to counsel already attached.

"Since it appears that there is grave potential for prejudice, intentional or not, in the pre-trial lineup, which may not be capable of reconstruction at trial, and since presence of counsel itself can often avert prejudice and assure a meaningful confrontation at trial, there can be little doubt that for Wade the post-indictment lineup was a critical stage of the prosecution at which he was 'as much entitled to such aid [of counsel] . . . as at the trial itself.'" (United States Supreme Court Reports, Lawyer Edition, vol. 18, p. 1163).

In the instant case, Hatton was brought to the police station only to be identified, by a witness to the killing of Algarme. Technically, he was not yet under custodial investigation.

"The right to counsel attaches upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the respondent/accused. At such point or stage, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation, for the commission of an offense."

"x x x."

"As aptly observed, however, by the Solicitor General, the police line-up (at least, in this case) was not part of the custodial inquest, hence, petitioner was not yet entitled, at such stage, to counsel. The Solicitor General states:

"When petitioner was identified by the complainant at the police line-up, he had not been held yet to answer for a criminal offense. The police line-up is not a part of the custodial inquest, hence, he was not yet entitled to counsel. Thus, it was held that when the process had not yet shifted from the investigatory to the accusatory as when police investigation does not elicit a confession the accused may not yet avail of the services of his lawyer (Escobedo v. Illinois of the United States Federal Supreme Court, 378 U.S. 478, 1964). Since petitioner in the course of his identification in the police line-up had not yet been held to answer for a criminal offense, he was, therefore, not

deprived of his right to be assisted by counsel because the accusatory process had not yet set in. The police could not have violated petitioner's right to counsel and due process as the confrontation between the State and him had not begun. In fact, when he was identified in the police line-up by complainant, he did not give any statement to the police. He was, therefore, not interrogated at all as he was not facing a criminal charge. Far from what professes, the police did not, at that stage, exact a confession to be used against him. For it was not he but the complainant who was being investigated at that time. He 'was ordered to sit down in front of the complainant while the latter was being investigated' (par. 3 .03, Petition). Petitioner's right to counsel had not accrued.' " (Gamboa v. Cruz, G.R. No. L-56291, June 27, 1988, 162 SCRA 642).

Third, the other prosecution witness who identified the accused-appellant as the knife wielder was Romeo Basierto. He claimed in his testimony that at the time the victim was stabbed, he did not at once recognize him (p. 5, TSN, June 30, 1987). However, when he chased him, he recognized the man as the herein accused-appellant when the latter turned his face towards Basierto before he allegedly entered the house of Nonong Hatton (p. 7, *ibid*). He knew the accused appellant because they were both residents of Catarman. However, as the defense counsel pointed out in the cross-examination, Basierto never mentioned the name of the accused-appellant in the sworn statement he executed on the 2nd of September 1986. In fact, he categorically stated that he did not recognize the man who stabbed Algame. We quote hereunder the pertinent portion of his affidavit:

"x x x.

"Q - Will you narrate to this investigator what transpired on that date and time

"A - While the four of us were on our way to the house of Engr. Corbilla on that particular date and time, passing near the CLAO office, we met two persons of which one was tall and the other was short. When the tall one got abreast with Faustino Algame who was walking at the edge of the street, he tapped Faustino by the shoulder and immediately delivered a blow at Faustino and at this instance he shouted for help saying that he was stabbed. I backed out a little to see what happened because I was hidden from view by Edgardo Ongue and I saw this tall man ran towards the corner near the house of Nonong Hatton and upon nearing the entrance of the fence of the house of Nonong Hatton, this tall man together with the short man who was following him got lost and I believe they entered the entrance of the fence to the house of Nonong Hatton. After this, I went to the police station.

"Q - Did you recognize the man who stabbed Faustino?

"A - No sir, but this morning, Edgardo Ongue who was the one who saw the face of this tall man who stabbed Faustino identified this man at the police station who later turned out to be Glenn Hatton the son of Nonong Hatton," (underscoring ours)

While an affidavit being taken *ex parte* is almost incomplete and often inaccurate (*People v. Avanzado*, 158 SCRA 427) the affiant Basierto could not have omitted the identity of accused-appellant as the knife-wielder if it were true that he was able to identify him at that time he gave chase. The matter of the identity of the knife-wielder could not have been omitted by him considering its importance in the resolution of the death of his friend.

While Basierto's other companions brought the victim to the hospital, he allegedly went to the police station to report the incident (TSN, p. 11, *Ibid*). The police on duty, Alfredo Nocha, however, testified that there was no entry in the police blotter regarding the death of Algame in the evening of August 29, 1986. There was an entry in the police blotter on August 30, 1986 that at 8:10 in the morning, a certain Vicente Rojas reported the stabbing of Algame by an unidentified man.

More importantly, the accused-appellant was not positively identified in court. True, his name was referred to by

both Basierto and Ongue in their respective direct testimonies. However, he was not identified in Court. The failure of the prosecution witness to positively identify the assailant in court is fatal to the prosecution's cause. Pre-trial identification is not sufficient.

While it is true that the defense of alibi is weak, it holds true only if the prosecution's evidence is strong. The better rule is, the prosecution must rely on the strength of its own evidence and not on the weakness of the defense (People v. Solis, et al., 182 SCRA 182 (1990); People v. Buenaflor, 181 SCRA 225 (1990), People v. Rodriguez, G.R. No. 95902, Feb. 4, 1992). With the exclusion of the pre-indictment identification of the accused-appellant and the failure of the prosecution witnesses to positively identify him in court, the case against him must fail.

ACCORDINGLY, The appealed decision is reversed. Accused-appellant is ACQUITTED on reasonable doubt.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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