

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VENERANDO NEBREJA Y ORALE, ROMEO GUIRALDO Y ADLAWAN,
JOHN DOE, MARK DOE AND PETER DOE, ACCUSED. ROMEO
GUIRALDO Y ADLAWAN,...**

G.R. No. 92447. October 17, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Pasay City, Branch 114, the dispositive, portion of which reads:

"WHEREFORE, this Court finds the accused VENERANDO NEBREJA y ORALE and ROMEO GUIRALDO y ADLAWAN guilty beyond reasonable doubt as principals of the crime of Violation of Section 3 (b) in relation to Section 1 (c) of Presidential Decree No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974, and hereby sentences each of them to suffer the penalty of life imprisonment (reclusion perpetua), to pay jointly and severally by way of reimbursement Mrs. Consuelo Duenas the amount of P119,000.00 representing expenses for the surgical operation and the burial of the late Paquito Duenas and the further sum of P25,000.00 which was stolen from the deceased, and Romeo Duenas the amount of P50,000.00 for his hospitalization expenses, to indemnify the heirs of Paquito Duenas the amount of P30,000.00 and Romeo Duenas the sum of P15,000.00, jointly and severally, as moral damages, and the costs of the proceedings in equal proportion." (Rollo, p. 34)

The information filed against the accused Guiraldo and Nebreja and three other companions, states:

"That on or about the 22nd day of March, 1988 in Pasay, Metro Manila and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually helping one another, being armed with handgun and bladed weapons, with intent to gain, by means of violence and intimidation on the person of Paquito Duenas y Manalaysay and Romeo Duenas y de Guzman while both were on board an owner-type jeep cruising F. Cruz St., Malibay, a public highway, this city, did then and there wilfully, unlawfully and feloniously take, steal and divest cash amount of P50,000.00 belonging to the complainants, to the damage and prejudice of the owner thereof in the aforesaid amount of P50,000.00.

"That on the occasion of the commission of the robbery and as a consequence of the violence employed upon the victims, Paquito Duenas y Manalaysay sustained mortal wounds which caused his death, while Romeo Duenas sustained serious physical injuries." (Rollo, pp. 8-9)

Upon arraignment, Guiraldo and Nebreja assisted by their counsel pleaded not guilty while the other accused's true names and present whereabouts are still unknown.

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is as follows:

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"xxx [t]he late Paquito Duenas y Manalaysay of No. 790 F. Cruz St., Malibay, Pasay City, was a merchant engaged in the business of buying live hogs, delivering them to the slaughterhouse in the same city, and distributing the meat to various retailers in the city markets. In partnership with Paquito Duenas was Lucina Carbonnel who, aside from operating a stall of her own in the meat section of the Libertad public market, also received the meat deliveries and rationed them to restaurants and other eateries. From his business, Paquito Duenas, who was also assisted by a married son Romeo, earned a handsome profit daily. Romeo Duenas drove for his father and accompanied him to the places his business required him to go. The family also had a stall at the public market where they sold pork on retail.

"Shortly past midnight at about 1:45 a.m. on March 22, 1988, Paquito Duenas and Romeo Duenas started out from home as was their daily routine in an owner-type jeep on their way to the city slaughterhouse. As the vehicle left F. Cruz St. and slowed to turn towards P. Santos St., a man suddenly emerged from the shadows on the side of the road and poked a gun at Paquito at the same time announcing that it was a hold-up. Startled by the shocking event, Romeo fumbled in his driving, causing the jeep to stall. Two (2) men came from behind and boarded the jeep at the rear; another man went to the side of Romeo and poked a knife at his neck, the other hand pointing to the jeep's gas pedal and motioning him to get the engine started again. One of the two (2) men at the back seat pointed something at Romeo's back and the other likewise pointed a weapon at his father's back. The man with a knife sidled beside Romeo and told him just to obey his orders and nothing bad will happen. Romeo revived the engine and, upon direction of the armed man beside him, drove the jeep to E. Rodriguez St. As if to impress that he meant business, the knife-wielding man on the driver's side slashed Romeo's left arm and ordered him to drive the jeep to Vitales Street, Pasay City. On their demand, Paquito Duenas handed over the P30,000.00 in a bag to the man seated beside him in the front seat. He even offered to give up the jeep but pleaded for their lives. As the jeep moved towards Vitales Street, the four (4) malefactors attacked in concord with their weapons. One of the men at the back seat stabbed his father on the neck and he fell forward towards the dashboard of the vehicle. The other man at the back seat stabbed Romeo on the neck, while the one seated beside him to his left likewise gave him a knife thrust. Then he heard a gun shot which was so close that he knew his father had been shot. He struggled to raise himself to check and he saw the robbers running away towards the direction of Rodriguez St., Malibay, Pasay City. Seeing his father slumped forward from his seat, Romeo, though himself wounded and bleeding, carried his father along Vitales Street for about eight to ten meters before he spotted a pedicab which he hailed. He placed his father in the pedicab and asked to be driven to the Philtranco bus terminal where he knew taxicabs parked while waiting for passengers. He lifted his father and then shouted for help. Someone came to his assistance and boarded them inside a taxi and brought them to the San Juan de Dios Hospital. The wounded men were wheeled into the emergency room and separately operated on. At about six o'clock in the morning, Paquito Duenas expired.

"Swiftly Dr. Alberta Roxas attended to Romeo Duenas who sustained five (5) stab wounds on the different parts of his body from the neck to the forearm (Exhibits "K" and "K?1"). After a thorough clinical examination, the doctor, suspecting that there was blood in the peritoneal cavity, decided to operate. The surgical operation disclosed that the diaphragm and the liver had been injured causing the accumulation of blood in the peritoneal cavity (Exhibit L). The timely surgical intervention and medical treatment had saved Romeo Duenas' life. The doctor declared that the injuries sustained by Romeo Duenas could have been inflicted by a sharp-edged, sharp pointed knife with the probability that more than one weapon of similar nature had been used and by more than one assailant.

"Pat. Gil Borcelis was on the night shift of the Investigation Division on March 21, 1988 and his tour of duty was until 8:00 o'clock of the following morning. In the early hours of March 22, 1988, Pat. Borcelis received a telephone call from security guard Eduardo Salarda of the San Juan de Dios Hospital that at about 2:15 a.m., two seriously injured persons were admitted at the emergency room. With Pfc. Cesar Manansala, Pat. Borcelis proceeded to the hospital and saw at the emergency room two victims who appeared in critical condition; the older of the two was unconscious and the younger one was reclining on a bed which was raised, conscious but could not be interviewed well. The attending physician said the two were victims of stabbing and shooting.

The younger patient who identified himself as Romeo Duenas declared that four (4) armed men boarded their jeep while they were on their way to the slaughterhouse, divested them of their money and thereafter attacked them with knives and a gun. After the sketchy interview, the two police investigators left the hospital, returned to their office to enter the incident in their log book, and reported the matter to the officer on duty. Cpl. Ricardo Santos took along three (3) operatives, Pat. Gil Borcelis, Joseph Hiyas and Melanio Advincula, and rushed to the scene of the crime. They found the bloodstained jeep on Vitales Street and a swarm of bystanders. They found a butcher's knife inside the motor vehicle and a plastic pail at the rear. Some relatives of the victims were also at the scene. Cpl. R. Santos, after directing Pat. Joseph Hiyas to find a way to have the jeep driven to the police headquarters, interviewed some people and tried to look for possible witnesses. From bits of information gathered, the police operatives decided to pay Eddie Rivera, a competitor in the meat business who also resided in Malibay, Pasay City, a visit and to question his known helper, Romeo Guiraldo, who agreed to come to the police station for questioning. It was agreed upon to bring Romeo Guiraldo to the hospital for confrontation with the surviving victim. Eddie Rivera, Romeo Guiraldo's employer, volunteered to come along and accompany his helper. Thus, in the evening of March 22, 1988, the police investigators brought Romeo Guiraldo accompanied by his employer Eddie Rivera to the hospital room of Romeo Duenas. Unfortunately, the patient, having just undergone surgical operation, was still under sedation.

"On April 8, 1988 at around 3:05 in the afternoon, Pat. Gil Borcelis saw in his office Pat. Serafica, a colleague and friend assigned at the Southern Police District Headquarters at Fort Bonifacio, and inquired what brought him there. Pat. Serafica replied that he accompanied the widow of Paquito Duenas and her son Romeo, who were his neighbors in Malibay, Pasay, on the information received that a suspect in the killing of Paquito Duenas and the wounding of Romeo Duenas had been arrested for theft and was already in police custody. Pat. Borcelis thereupon asked that the suspect in the theft case identified as Venerando Nebreja be taken out of his detention cell and brought to the Investigation Division which included the Theft and Robbery Section. Upon sight of Venerando Nebreja, Romeo Duenas broke into tears and shouted: 'Ito ho! Ito ho!' (This is the one! This is the one!) Pat. Borcelis asked Romeo Duenas what he meant and the latter said that the suspect in the theft case who was brought in was one of the four (4) men who held them up, stabbed him and killed his father.

"The police investigators then interrogated Venerando Nebreja and from the information gathered in the questioning, new leads were discovered. Pfc. Cesar Manansala and his men, Pfc. Fernando de Castro, Pat. Gil Borcelis and Melanio Advincula looked for Romeo Guiraldo in order to question him. They scoured the slaughterhouse where he was alleged to be working but did not find him. At about 2:00 a.m. on April 10, 1988, the police operatives posted themselves before the slaughterhouse and waited for their subject to arrive with his employer. They found him with his employer and invited him to the police station for questioning. Romeo Duenas was fetched from his home. On arrival at the Investigation Division and on seeing the suspect inside, Romeo Duenas again broke into tears and pointed to Romeo Guiraldo as among the men who robbed them, stabbed him and killed his father. Venerando Nebreja was also summoned from detention and brought to the Investigation Division where he pointed to Romeo Guiraldo as the one who came to his place one morning and asked him to join in staging a hold up with their companions 'Eddie' and 'Kiddy'. However, both Venerando Nebreja and Romeo Guiraldo refused to give a written statement.

"Dr. Rodolfo Lizondra, supervising medico-legal officer of the National Bureau of Investigation, performed the autopsy at the official morgue at the Rizal Funeral Homes on the cadaver of Paquito Duenas which was identified by his brother-in-law Sergio Salvador of No. 282-A Geronimo St., Malibay, Pasay City (Exhibit "F") and who also requested the autopsy in writing (Exhibit "G"). The medico-legal officer conducted an external and internal examination of the body of the deceased and noted contused abrasions on the forehead, an incised wound on the left side of the neck, another incised wound on the palm and index finger of the left hand, a stab wound on the right forearm, another stab wound on the right side of the chest, and a gunshot wound with a contusion collar on the upper portion of the right shoulder blade (Exhibits "E" and "E-1"). He opined that the stab wounds were probably caused by a single-bladed knife. He established the cause of death as hemorrhage secondary to gunshot wound on the back and stab wounds on the chest and forearm. He then prepared his final

report docketed as Autopsy Report No. 88-824 (Exhibit "D").

"Mrs. Consuelo Duenas testified that her husband was operated on at the San Juan de Dios Hospital in an effort to save his life. She spent approximately P100,000.00 for the operation, surgeon's fees and the medicine (Exhibit "B-1" to "B-55"). She spent P15,000.00 for the funeral services provided by the Rizal Funeral Homes, Inc. (Exhibit "B"), about P2,000.00 during the vigil and another P2,000.00 00 for the burial. When Paquito Duenas was waylaid by his killers, he carried with him P25,000 00 in cash and several bank checks payable to Eliong Rivera, and all of these were taken away by the malefactors. Paquito Duenas died at the age of forty-four (44), healthy and with a thriving business from which he derived a net earning of about P1,000.00 a day.

"Romeo Duenas, on his part, spent approximately P50,000.00 for his operation and hospitalization, including medicine. As a result of the traumatic incident he went through, his sight weakened and he often experienced difficulty of breathing." (Rollo, pp. 27-30)

The version of the defense, on the other hand, is as follows:

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"x x x[a]ccused Romeo Guiraldo y Adlawan denied the accusation against him. He declared that he had nothing to do with the crime imputed to him and did not know the supposed scene of the robbery. He claimed that at dawn of March 22, 1988, he was in the house of Eddie Rivera, a brother of his employer Eliong Rivera. Although he was a driver-helper of Eliong Rivera, he also helped Eddie Rivera and his wife purchase hogs from random pig raisers and delivered them to the slaughterhouse. Between 1:00 a.m. and 2:00 a.m. of March 22, 1988, he was with Eddie Rivera from the latter's house at P. Basilio St., Pasay City, up to the time they went to the slaughterhouse located at the back of the J.B. Liner bus depot near Pinagbarilan St. in Pasay City. They stayed there, waited for the butchers to finish dressing the carcasses and returned to Eddie Rivera's residence only after they were through with their work. It was while he was at the Rivera residence when police investigators arrived looking for Eddie Rivera. His presence in the house of Eddie Rivera made the lawmen suspicious and consequently grilled him intensely. The three (3) police officers then drove him to his employer's residence where they obtained Eliong Rivera's permission to bring him to the police station for further questioning. He was made to board an automobile which was driven around Malibay and up to Epifanio de los Santos Avenue, Pasay City, where it stopped in front of a small house. The policemen alighted, went inside the house and returned with a man in tow whom they ordered to sit also in the back seat. The two (2) pick ups were brought to the office of the Theft and Robbery Section and investigated on their suspected participation in the hold-up-slaying of Paquito Duenas and the wounding of Romeo Duenas. In the office of the investigators was a third man also being interrogated. After the questioning, the three (3) suspects were locked up in a safety cell until late in the evening when they were taken out and brought to a hospital. They were made to enter a room one after another and as directed by their captors. When his time came to enter, Romeo Guiraldo noticed a patient who was sitting up on an elevated bed before whom he was made to walk slowly and turn around. Finally he was asked to face the man who looked him up and down but did not say a word. He and his two (2) companions in the safety cell of the Theft and Robbery Section of the police headquarters were then released. He immediately returned to the house of Eliong Rivera, his employer, and explained why it took him a long time to come back.

"Romeo Guiraldo continued working for Eliong Rivera until April 9, 1988 when he was picked up by the police inside the city slaughterhouse. The arresting officers told him he will be investigated again. He was hustled to a car and brought to a dark spot along Roxas Boulevard. It was a little past dawn and the place was deserted. The three (3) police officers told him to point to Eddie Rivera as the mastermind, otherwise his life has been paid for, a remark he understood to mean he will be 'salvaged', when he refused because he and his employer had nothing to do with the crime, the policemen prodded him down as trying to escape. He did not budge and dared the lawmen to shoot him inside the police car. One of the policemen pointed a gun at his

temple and squeezed the trigger but it did not fire. He was brought back to the Theft and Robbery Section and, inside its toilet, was handcuffed behind his back, mauled, subjected to water torture and struck all over the body, particularly the region of the thighs, with a piece of rattan pole called 'balila'. They wanted him to confess participation in the commission of the crime but he claimed innocence and held on.

"In the morning of April 10, 1988, Romeo Guiraldo was brought to the office of the Investigation Division. His, co-accused Venerando Nebreja was led in to confront him but did not point to him or say a word. He learned that Venerando Nebreja had been arrested for theft of a man's pair of trousers but was being suspected of complicity in the Duenas slaying." (Rollo, pp. 30-31)

From a reading of the appellant's brief, it would seem that the appeal is made in behalf of both Guiraldo and Nebreja. But it is clear from the July 7, 1989 order (Records, p. 369) of the lower court that only Guiraldo filed his notice of appeal. As far as Nebreja is concerned, the period of appeal has expired so that entry of judgment was ordered to be made. Although the notice of appeal (Records, p. 368) is to the Court of Appeals, the July 7, 1989 order of the lower court directed that the records of the case be forwarded to the Supreme Court. Guiraldo, then, is the only appellant in this case.

The excellent presentation by counsel de oficio Reynaldo T. Mempin of the appellant's defense is commendable. We had to take extra efforts in considering the evidence on record in the light of his arguments.

The appellant raises the following assignment of errors, to wit:

I

"THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE IDENTIFICATION MADE BY THE LONE EYEWITNESS ROMEO DUENAS OF BOTH ACCUSED AS AMONG THE PERPETRATORS;

II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED WERE ARRESTED ILLEGALLY; AND IN NOT CONSEQUENTLY FINDING THAT THE CONSEQUENCES AND EFFECTS OF THE ARREST ARE EQUALLY ILLEGAL HENCE, INADMISSIBLE;

III

THE TRIAL COURT ERRED IN ADMITTING THE "CONFESSION" OF THE ACCUSED GIVEN DURING CUSTODIAL INTERROGATION AND IN GIVING CREDENCE TO THE TESTIMONY OF PATROLMAN GIL BORCELIS, MOST SPECIFICALLY BUT NOT LIMITED TO, THE IDENTIFICATION OF THE ACCUSED WHICH ARE INHERENTLY INADMISSIBLE BY CONSTITUTIONAL PROHIBITION;

IV

THE TRIAL COURT ERRED IN THE APPLICATION OF THE CONTINUOUS TRIAL SYSTEM IN TOO STRICT AND UNBENDING MANNER THAT THE RIGHTS OF THE ACCUSED HAD BEEN PREJUDICED;

V

THE TRIAL COURT ERRED IN NOT SUSTAINING THE DEFENSE OF ALIBI AND DENIAL AND IN CONVICTING THE ACCUSED DESPITE THEIR RIGHT TO CONSTITUTIONAL PRESUMPTION OF INNOCENCE AND THE ABSENCE OF A CLEAR SHOWING THAT THEY WERE GUILTY BEYOND

REASONABLE DOUBT CONSIDERING THE TOTALITY OF FACTS AND CIRCUMSTANCES WHICH NEGATE A CONVICTION." (Appellant's brief, pp. 5-6)

In the first assigned error, the appellant questions the credibility of the identification made by the prosecution's sole eyewitness, Romeo Duenas, pointing to him as one of the malefactors. The appellant contends that such identification is not believable because of the following circumstances: First, Romeo (name used in the text of this case for the victim) never described the perpetrators to the policemen who interviewed him when he was in the hospital nor did he furnish such information to the doctors who treated him. His non-disclosure is not natural for someone who is on the brink of death as it is expected that one would want to have the perpetrators brought to justice, if that would be the last thing that he would do. Second, even after his confinement at the hospital, he still did not go to the police authorities to describe his assailants. It was only on April 10, 1988, 19 days after the occurrence of the incident that he executed his affidavit. Third, as Romeo was in a shocked and startled state, his faculties of observation were not as keen as that of one in a normal state. Fourth, there was no description of the scene of the crime, whether or not there was sufficient light to make a proper identification. Fifth, the inconsistencies in Romeo's testimony make such testimony doubtful. Romeo testified that it was accused Nebreja who was the person seated beside his father (TSN, May 26, 1988, p. 13) despite his earlier claims that it was the appellant Guiraldo who was beside his father (TSN, May 26, 1988, p. 8-9). Also, he stated that it was Guiraldo who stabbed his father (TSN, May 26, 1988, pp. 8-9) but later stated that it was Guiraldo who shot his father. (TSN, May 26, 1988, pp. 13-14) These inconsistencies weaken the sole eyewitness' testimony.

The abovementioned circumstances which the appellant believes cast doubts on the credibility of the testimony of the prosecution's sole eyewitness can all be satisfactorily explained.

The inability of Romeo to furnish the description of his malefactors at the hospital either to the police investigators or to his doctors can be attributed to the fact that he suffered five stab wounds in various parts of his body, one of which was life threatening which required him to undergo a much-needed operation (TSN, December 20, 1988, pp. 6-10). Also, he was in shock after seeing his father being stabbed and shot. Aside from these, he had to muster all the strength he had left to be able to bring his father and himself to the hospital. Despite the wounds that he sustained, he still carried his father for a distance of 8 to 10 meters before he got some help. (TSN, June 2, 1988, pp. 4-5). The first and foremost thing that was important was for him and his father to survive.

With regard to the delay in reporting to the police authorities, this is sufficiently justified by the fact that Romeo was still recuperating. The doctor who attended to him testified that it would take more than 30 days for Romeo's wounds to heal (TSN, December 20, 1988, p. 10). Despite the fact that he was only confined for five days, he was still being treated continuously after that five day period. (TSN, December 20, 1988, p. 10) Moreover, the death of his father created a void that had to be filled. Romeo was one of the only three children that the deceased left. (TSN, July 7, 1988, p. 4). He was also a big help to the father's business. (TSN, May 20, 1988, pp. 4-5) The delay is also consistent with normal behavior considering that after a tragic incident, the last thing that the bereaved would want to happen is to provoke further reprisals from the perpetrators of the felonious act. Although there is a natural tendency to seek the ends of justice for the treacherous killing of a dearly departed, mourning and rites for the dead take priority as dictated by our culture. (People V. Sabellano, G.R. Nos. 93932-33, June 5, 1991).

As to the third circumstance, although Romeo appeared to be shocked at the sudden appearance of a person with a gun thereby causing the engine of the jeep he was driving to stall, (TSN, May 20, 1988, p. 9) he immediately recovered. He started the engine of the jeep as per instruction of one of the hold-uppers and proceeded to drive. He was not in a shocked or startled state as the appellant would like us to believe. He had control of his senses as he was even driving and was pleading with the hold-uppers to spare their lives. (TSN, May 26, 1988, p. 6)

As to the fourth circumstance, whether there was sufficient light to make an identification is a proper subject of cross-examination. It should, however, be presumed that Romeo was driving the jeep with its lights on under the ordinary course of events. (Rule 131, Sec. 5 (z), Rules of Court) Also, public highways like the one wherein the crime was committed are usually lighted by street lights. Besides, the appellant was only at most a few feet away from Romeo as they were all inside the jeepney. Likewise, the appellant was not a complete stranger to him as he has seen him several times previous to the incident. (TSN, May 26, 1988, p. 10; TSN, June 2, 1988, p. 6)

As to the inconsistencies in Romeo's testimony, we agree with the trial court that these are minor inconsistencies. The exact position of the appellant inside the jeepney is a minor matter. What is important is that the appellant was identified as among the malefactors. The inconsistency as to who stabbed or shot Romeo's father is also of no moment as conspiracy has been established in the case at bar. The actuations of the accused immediately prior to, during, and right after the hold-up indicate their common intention to commit the crime. The appellant as co-conspirator then, is guilty on the principle that the act of one is the act of all (People v. Arenas, G.R. No. 92060, June 5, 1991; People v. Umbrero, G.R. No. 93021, May 8, 1991)

The appellant further argues that the identification made by Romeo of Guiraldo at the Pasay City Police Department when he shouted: Siya po, siya po ang sumaksak sa tatay ko. (TSN, May 6, 1988, pp.34-35) was only narrated by Pat. Borcelis. As such, his testimony is inadmissible as it is considered hearsay.

As the defense failed to object to the hearsay evidence presented his right of confrontation and cross-examination is deemed waived. The evidence then, is admissible. (See Allarde v. Abaya, 57 Phil. 909, 922 [1933]) But admissibility of evidence should not be equated with weight of evidence. Hearsay evidence, whether objected to or not, has no probative value. (People v. Valero, 112 SCRA 661, 675 [1982]) But even without Pat. Borcelis' testimony, the appellant was positively identified. Romeo in open court, identified the appellant. (TSN, May 26, 1988, pp. 8-9) As said earlier, Romeo was certain that the appellant was one of the malefactors as he saw the appellant before the appellant boarded the jeep (TSN, May 20, 1988, p. 9; TSN, June 28, 1988, p. 8) and he recognized the appellant as he has seen the appellant previous to the incident. (TSN, May 26, 1988, p. 10; TSN, June 2, 1988, p. 6)

Furthermore, the appellant questions the manner in which he was presented for identification. He believes that the police may have already conditioned the mind of Romeo that he was one of the culprits.

There is no showing that the identification could have been suggested to the witness by the police. In fact, Romeo upon seeing Guiraldo immediately broke into tears. (TSN, May 6, 1988, pp. 34-35) The appellant himself did not mention any circumstances that the police had, indeed, prodded Romeo to identify him. Had there been any prodding, the appellant would have admitted to the identification and said that such identification was made with the help of the police but instead he even denied that such an identification was made as he said that Romeo said nothing upon seeing him and Romeo never pointed to him. (TSN, February 7, 1989, p. 31)

Even if the appellant was not presented in a police line-up (TSN, February 7, 1989 p. 31) there could still be proper identification as long as such identification was not suggested to the witness by the police. (People v. Salguero, G.R. No. 89117, June 19, 1991)

Romeo's identification of the appellant is also bolstered by his absence of improper motive to falsely testify against the appellant (People v. Santiago, G.R. No. L-46132, May 28, 1991)

In view of the positive identification made by Romeo of the appellant, his contention in the fifth assigned error that the trial court erred in not sustaining his defense of alibi and denial is without merit. It is a well-settled rule that alibi cannot prevail over positive identification. (People v. Toribio, G.R. No. 88098, June 26, 1991; People v.

Castillo, 120 SCRA 381, 388 [1983])

As regards the additional argument of the appellant that if he were really one of the assailants, he would have then already fled instead of continuing to report for work, this must also fail. The fact that the appellant continued to report for work is not conclusive evidence of absence of guilt. (See *People Mitra*, 179 SCRA 612, 617 [1989]; *People v. Luardo*, 167 SCRA 685; 703 [1988]). The appellant's release after his March 22, 1988 pick-up might have emboldened him to stay on.

The appellant also questions his March 22, 1988 and April 10, 1988 arrests in the assigned error. He states that his arrest is illegal so the effect and consequence of such arrests are inadmissible.

Whether or not the effect and consequence of the appellant's arrest are inadmissible need not be discussed in detail as the trial court based its finding of guilt beyond reasonable doubt on the positive identification made by Romeo not on the evidence gathered as a result of the appellant's arrest. The police state that Guiraldo agreed to come with the policemen for questioning. The appellant now states that he was forced, hence illegally arrested. By the very arguments of the appellant, it appears that the investigations had not yet focused on him as the probable culprit. If not, the invitation was part of a general inquiry. The appellant engages in self-contradictions.

Such is also the case with regard to the first part of the third assigned error contesting the trial court's admission of the verbal confession made by the appellant during the custodial investigation. This need not be delved into as the conviction of the appellant was based on the positive identification made by Romeo. The trial court did not even consider the verbal confession made by the appellant in its findings. The second part of this assigned error which involves Pat. Borcelis' testimony has already been discussed.

In the fourth assigned error, the appellant believes that because the trial court applied the continuous trial system too strictly, he was deprived of his right to be heard and to be assisted by counsel. He states that he could no longer present additional witnesses from whom he had secured affidavits (Records, pp. 16-18) corroborating his defense of alibi because the lower court considered the case submitted for decision in its order of April 20, 1989.

The lower court's order to consider the case submitted for decision is not without reason. The order specifically states:

"It is already 10:35 and Atty. Rolando Javier, counsel de parte for both accused, is not yet in Court. During the hearing of April 11, 1989, Atty. Rolando Javier asked for a postponement, with commitment that if he is unable to present a new witness this morning, the case shall be deemed submitted for decision. On account of the non-appearance of Atty. Rolando Javier, there being no motion filed to explain his non-attendance this morning, and the prosecution having elected not to present any rebuttal evidence, the case is deemed submitted for decision." (Underlining Supplied)" (Records, p. 351)

This was not the first time that the defense could not present a witness. The April 11, 1989 order likewise, granted the postponement of the hearing set for that date as the defense counsel manifested that the last witness intended to be presented was not available. There was no basis for further postponement. The prosecution did not elect to present any rebuttal evidence. Both the accused had already finished testifying and from an examination of the affidavits secured by the appellant from his would-be witnesses to corroborate his alibi, these still did not establish that the appellant was at some other place and for such a period of time as to negate his presence at the time when and the place where the crime was committed. (*People v. Carcedo*, G.R. No. L-48085, June 26, 1991; *People v. Solis*, G.R. No. 93624, March 18, 1991) The purpose of the continuous trial system is to expedite the decision or resolution of cases in the trial court. Circular No. 1-89 (January 19, 1989) which laid down the guidelines in the conduct of the continuous trial, states that "a strict policy on postponements shall be observed" and "the judge shall conduct the trial with utmost dispatch, with judicious exercise of the court's power to control

the trial to avoid delay." The appellant has not shown any meritorious reason for an extension of the proceedings. Also, the claim that he was not assisted by counsel will not lie as the appellant was still represented by counsel as of that date despite his counsel's non-appearance.

In view of the foregoing, the appellant is found guilty beyond reasonable doubt of the crime of violation of Section 3 (b) in relation to Section 2 (e) of Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974). As the death penalty was abolished by the 1987 Constitution, the penalty of reclusion perpetua is imposed. The indemnity to the heirs of deceased is raised to P50,000.00. The hospital expenses of Paquito Duenas is decreased to P16,159.40, as per the receipts in the folder of exhibits, thus total expenses representing cost of surgical operation and burial of Paquito Duenas is decreased to P35,159.40. Hospitalization expenses of Romeo Duenas it likewise decreased to P24,138.25 as per the receipts in the folder of exhibits.

WHEREFORE, the appealed decision is hereby **AFFIRMED** with the aforesaid modifications.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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