

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIMON RAMOS, ANTONIO CONTRERAS, ET AL., ACCUSED-APPELLANTS.*G.R. Nos. 101804-07. May 25, 1993*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-101804-07/>**DAVIDE, JR., J.:**

At around 8:30 o'clock in the evening of 3 May 1989, at 266 Cabatuan St., Deparo, Kalookan City, gun-wielding men barged into the residence of Leoncio Flores while the occupants therein were about to take their supper. The intruders threatened and hogtied the occupants, ransacked the house, and carried away several appliances and personal effects; they loaded the items on a Ford Fiera truck belonging to Leoncio Flores which they had taken from the garage. Leoncio Flores, who was not home at the time, came to know of the incident when told an hour later by his nephew Elmo Flores. The former immediately notified the police and was given assistance. The truck, already cannibalized, was recovered the next day in a vacant lot in Barrio Capri, Novaliches, Quezon City.

Eight (8) days later, or on 11 May 1989, another robbery took place at the residence of Reynaldo Punzalan in Jordan Heights Subdivision, Kalookan City. Reynaldo and his wife Marissa drove home early that evening from their store in Novaliches. When they reached their gate at around 8:00 o'clock, Reynaldo blew the car horn to signal any of their three (3) household helpers to open the garage gate. As none responded despite his continuous blowing, Marissa had to alight from the car and open the gate. When the car entered the driveway, two (2) armed men suddenly emerged from the house and grabbed Marissa; one leveled a gun at her while the other grappled for the possession of her bag. Reynaldo, who was about to get off from the car, was also attacked. He was able to run outside and shout for help from male neighbors who immediately gave succor. In the commotion that ensued, shots were fired as Marissa's attackers ran off with her bag; three (3) other armed companions rushed towards the street and escaped. Later, the Punzalans discovered that their household helpers had been hogtied and were lying face down under the beds, that their two (2) minor children were hiding in the comfort room, and that several personal belongings, including antique jewelry, cash, clothing and a car stereo, were missing. Several appliances like their Betamax recorder, television set and electric fans were also found piled up at the back of the house, ready to be carted away. Reynaldo Punzalan immediately informed the police and gave a statement at the headquarters.

On 17 May 1989, following a tip from an informer, police operatives from the Urduja Police Sub-Station III in Kalookan City reconnoitered Miranda subdivision for a possible engagement with the suspects. Accompanied by Reynaldo Punzalan, the lawmen chanced upon Felimon Ramos, who was then pointed to by Reynaldo as one of the five (5) armed men whom he encountered during the robbery. When accosted and frisked by the lawmen, Ramos yielded in his waistline a .38 cal. snub nosed "paltik" revolver loaded with two (2) live bullets. At the police headquarters where he was brought for interrogation, Ramos admitted involvement in the aforementioned incidents and identified all his cohorts, one of whom is Antonio Contreras.

On 18 May 1989, police operatives picked up Contreras at Doña Rosario Subdivision in Novaliches, Quezon City.

On 22 May 1989, four (4) informations[1] were filed with the Regional Trial Court (RTC) of Kalookan City, to wit:

- (1) For robbery in band against Felimon Ramos, Antonio Contreras, John Doe @ Rene Sayas, Peter Doe @ Boy Bayag, Charlie Doe @ Bodoy and Richard Doe @ Doming Balbas;
- (2) For violation of P.D. No. 1866[2] against Felimon Ramos;
- (3) For violation of R.A. No. 6539[3] against Felimon Ramos, Antonio Contreras and five (5) John Does; and
- (4) For simple robbery against Felimon Ramos, Antonio Contreras and five (5) John Does.

These were docketed as Criminal Cases Nos. C-32860(89), C-32861(89), C-32862(89) and C-32863(89), respectively, and were assigned to Branch 131 of the said court which was designated as a Special Criminal Court.

The pertinent portions of the four (4) informations read as follows:

Criminal Case No. C-32860 (89)

"The undersigned Assistant City Fiscal accuses FILIMON (sic) RAMOS Y SAN ROQUE, ANTONIO CONTRERAS Y RAMOS, JOHN DOE @ RENE SAYAS, PETER DOE @ BOY BAYAG, CHARLIE DOE @ BODOY and RICHARD DOE @ DOMING BALBAS, whose true names, real identities and present whereabouts of the four-mentioned accused, still unknown of the crime of ROBBERY-IN-BAND, committed as follows:

That on or about the 11th day of May 1989 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, all armed with guns, with intent of gain, and by means of violence and intimidation employed upon the persons of IRENEO ROCHA Y OBAOD, GEMA & MANANG, the helpers of REYNALDO PUNZALAN Y BUENAVENTURA, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles to wit:

one (1) Car Stereo Radio cassette worth P8,000.00

one (1) Unit Tachometer worth P2,500.00

assorted jewelries (sic) worth P40,000.00

assorted clothings worth P500.00

one (1) shoulder bag containing cash of P6,500.00

and make-up kit worth P1,000.00

Total -- P58,500.00

all belonging to the said Reynaldo Punzalan y Buenaventura, to the damage and prejudice of the latter in the aforementioned total amount of P58,500.00.

Contrary to Law.”[4]

Criminal Case No. C-32861 (89)

"The undersigned Assistant City Fiscal accuses FELIMON RAMOS Y SAN ROQUE of VIOLATION OF P.D. 1866, committed as follows:

That on or about the 17th day of May 1989 in Kalookan City, Metro Manila and within the jurisdiction of this

Honorable Court, the above-named accused without any lawful authority, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) .38 Caliber Revolver marked S & W without Serial Number, (Paltik), (5) Shooters (sic), Snub Nose, with two (2) live cartridges in its cylinder, without first securing the necessary license or permit to possess the same.

Contrary to Law."[5]

Criminal Case No. C-32862 (89)

"The undersigned Assistant City Fiscal accuses FELIMON RAMOS Y SAN ROQUE and ANTONIO CONTRERAS Y RAMOS and FIVE JOHN DOES, true names real identities and present whereabouts of the last-accused still unknown of crime of (sic) VIOLATION OF R.A. 6539, committed as follows:

That on or about the 3rd of May 1989 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, did then and there wilfully, unlawfully and feloniously take, steal and carry away Ford (sic) Fierra (sic) described as follows:

One (1) Ford Fierra (sic) with plate No. NCU-701 belonging to LEONCIO FLORES Y CASTRO to the damage and prejudice of the latter.

Contrary to Law."[6]

Criminal Case No. C-32863 (89)

"The undersigned Assistant City Fiscal accuses FELIMON RAMOS Y SAN ROQUE, ANTONIO CONTRERAS Y RAMOS and FIVE JOHN DOES, true names, real identities and present whereabouts of the last-accused still unknown of the crime of ROBBERY, committed as follows:

That on or about the 3rd day of May 1989 in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the abovenamed accused conspiring together and mutually helping one another, with intent of gain and by means of force and violence and that is by pointing a gun and hogtying ELMO FLORES, NOEL FLORES and AMADEO BAUTISTA, did then and there wilfully, unlawfully and feloniously take, rob and carry away the following articles to wit:

one (1) Black & White Television worth P3,500.00

one (1) Desk Fan sanyo (sic) worth P700.00

one Cassette Radio Recorder Sanyo P3,000.00

one (1) Wall clock 3-d worth P300.00

Three (3) Wrist watches (sic) Seiko-5 P2,800.00

Pants, blanket fork (sic) and spoon and

Flat iron GE worth P480.00

all belonging to the said Elmo Flores y Santo, to the damage and prejudice of the latter in the total amount of P10,780.00.

Contrary to Law."[7]

Bail bonds recommended in the said cases were P30,000.00, P180,000.00, P100,000.00 and P20,000.00, respectively.

Only accused Ramos and Contreras were arrested.

The four (4) cases were consolidated. Upon arraignment on 29 May 1989, accused Ramos and Contreras, assisted by counsel de oficio, pleaded not guilty to the crimes charged.[8] The cases were thereafter set for pre-trial and after it was terminated on 19 June 1989,[9] joint trial proceeded on various dates. The prosecution presented as its witnesses Reynaldo Punzalan, Marissa Punzalan, Gemma Gayon, P/Sgt. Marino Lardizabal, Leoncio Flores, Elmo Flores, P/Sgt. Renato Balbin and Noel Flores. The defense presented one Danilo Santiago and accused Felimon Ramos as its witnesses. However, in its Order of 27 February 1991, the direct testimony given by Ramos on 9 October 1989[10] was ordered "deleted from the records" for his failure to appear on the said date for cross-examination.[11]

On 26 March 1991, the trial court promulgated its joint decision finding accused Ramos and Contreras guilty beyond reasonable doubt of the crimes charged.[12] The dispositive portion thereof reads as follows:

"WHEREFORE, the Court renders judgment as follows:

1. Convicting accused FELIMON RAMOS y SAN ROQUE and accused ANTONIO CONTRERAS y RAMOS for the crime of Robbery in Band (Criminal Case No. 32860) and sentences each of them to suffer RECLUSION PERPETUA; and to jointly reimburse Reynaldo Punzalan the amount of Fifty-Eight Thousand Five Hundred (P58,500.00) representing value (sic) of the stolen items;
2. Convicting accused FELIMON RAMOS for the crime of Violation of Presidential Decree No. 1866, as amended (Criminal Case No. 32861) and sentences him to suffer SEVENTEEN (17) YEARS, FOUR (4) MONTHS AND ONE (1) DAY AS MINIMUM TO TWENTY (20) YEARS, as maximum;
3. Convicting accused FELIMON RAMOS and accused ANTONIO CONTRERAS for the crime of Carnapping (Crim. Case No. 32862) and sentences each of them to suffer imprisonment of FOURTEEN (14) YEARS, and EIGHT (8) MONTHS and ONE (1) DAY to SEVENTEEN (17) YEARS; and
4. Convicting accused FELIMON RAMOS and accused ANTONIO CONTRERAS for the crime of Robbery (Criminal Case No. 32863) and sentences each of them to suffer FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY to SIX (6) YEARS of imprisonment; and reimburse Elmo Flores the sum of Ten Thousand Seven Hundred Eighty (P10,780.00) Pesos, representing value (sic) of the stolen items.

SO ORDERED."[13]

The promulgation of the judgment against accused Antonio Contreras was made in absentia since he had "jumped bail." [14]

The evidence for the prosecution, upon which the joint decision is based, is summarized in the Appellee's Brief as follows:

"I. Criminal Case No. 32860 (Robbery in Band) and Criminal Case No. 32861 (Violation of P.D. No. 1866, Illegal Possession of Firearm):

At about 8:00 o'clock in the evening of May 11, 1989, Reynaldo Punzalan and his wife arrived at their residence at Da-ang Liit Novaliches, Kalookan City on board their car. Reynaldo blew his carhorn to alert his household help to open the gate but despite continued horn--blowing nobody responded forcing Reynaldo's wife to alight from the car and to personally open the gate. Thereafter, Reynaldo entered and drove the car into the garage. But as Reynaldo stepped out of the car and about five arms length away he saw two armed men approaching him menacingly (whom he later identified as Felimon Ramos and Antonio Contreras) while a third man was holding his wife. Reynaldo ran outside the house to seek his neighbor's assistance and was

pursued by Ramos and Contreras. Suddenly, a shot rang out from inside the house and immediately five armed men came rushing out some of whom Reynaldo saw holding something. As the group approached Reynaldo and his neighbors, Ramos fired at them (pp. 8-13, tsn, June 19, 1989).

Reynaldo and his neighbors then rushed inside the house where Reynaldo saw his household help lying face down under the bed, his two children in the corner of the comfort room and his wife hiding under the steering wheel of his car. Reynaldo saw that some of their household appliances were piled at the back of their house, ready to be carried out. Subsequently, Reynaldo also discovered that some of their personal belongings like jewelry, cash, clothing, make-up kit, tachometer, car stereo with a total money value of P58,500.00 were missing (pp. 14-16, supra).

Reynaldo immediately reported this incident to the police authorities and on the morning of May 17, 1989, Reynaldo in the company of a police team, proceeded to a house at the Miranda Subdivision where appellant Ramos, per the police informant, was residing (pp. 16-17, supra). Thereat, Reynaldo saw a man at the gate of the house whom he recognized as one of the robbers (pp. 8, 16 tsn, July 17, 1989) and accordingly informed Pat. Rodillas, a member of the police team who then alighted from the police vehicle, talked to the man and afterwards frisked him. Pat. Rodillas found a gun tucked at the man's waist (p. 7, supra). At the police sub-station, the man who was identified as Felimon Ramos named a certain Contreras as one of his companions in robbing the house of Reynaldo. On May 18, 1989, the police team, accompanied by Ramos, proceeded to a shop somewhere in Doña Rosario Subdivision, Novaliches where they found Contreras fixing a vehicle. Contreras was invited to the police station for investigation. Thereat, he was pointed to by Reynaldo as one of the robbers (pp. 9-11, supra).

The gun recovered from Ramos, which was a Danao Paltik revolver, snub nose, contained two (2) live bullets (p. 12, supra).

II. Criminal Case No. 32862 (Violation of R.A. 6539 and 32863 [Robbery]):

At about 8:30 o'clock in the evening of May 3, 1989, Elmo Flores, his family and his co-employees were at the residence of their employer, Leoncio Flores at Cabanatuan St., Deparo, Kalookan City where they reside. As Elmo and his co-employees were about to take their supper, three armed men with their faces covered with handkerchiefs suddenly entered the house through the kitchen door. One of the armed men poked a gun at Noel Flores, Elmo's cousin, and ordered them to be silent and to lie down. As Elmo was not able to immediately comply, he was kicked but in the process the armed man's face cover dropped. Elmo recognized the man who he later identified in court and in the police station as Felimon Ramos. The other two ransacked the house and got several articles like wristwatches, pants, silverwares (pp. 19-22, tsn, July 17, 1989).

After about thirty minutes, the armed men loaded the articles they took from the house to the vehicle (Ford Fiera) parked beside the kitchen and owned by Leoncio Flores. Two members of the armed group returned to the kitchen and tied Elmo and his companions. At this time, the faces of these two men were not covered (pp. 29, tsn). In court, Elmo Flores identified these men as Ramos and Contreras. Thereafter, the armed group boarded the vehicle and speeded away. The vehicle was later found abandoned somewhere in Novaliches and 'cannibalized' (p. 7, tsn, June 7, 1989).

On May 18, 1989, Noel Flores, on confrontation with Ramos and Contreras at the police station, recognized the two as members of the armed group that entered and ransacked their residence on May 3, 1989 (p. 11, tsn, August 14, 1989)."[15]

On the other hand, in view of the striking out from the records of the direct testimony of accused Ramos,[16] the evidence for the defense consists entirely of the testimony of Daniel Santiago, a barangay captain of the locality where accused Ramos resides. He testified that he was with Sgt. Marino Lardizabal when the latter interviewed Reynaldo Punzalan about the robbery that occurred in the latter's house. According to him, Reynaldo declared that

he failed to recognize the suspects because their faces were covered.[17] He further testified that in his presence, accused Ramos denied the accusations and charges against him when confronted by the police officers on 17 May 1989,[18] and that Ramos himself told him that he was not the robber.[19]

In convicting the accused, the trial court gave full credence to the version of the prosecution witnesses. The court *a quo* said:

"Moreover, prosecution (sic) was able to positively identify that the two (2) accused, Ramos and Contreras, were among the perpetrators of simple robbery committed on May 3, 1989.

x x x

and were also the perpetrator (sic) of robbery-in-band committed on May 11, 1989:

x x x

In Criminal Case No. 32861, the prosecution likewise was able to establish that accused Ramos when apprehended was in possession of a black-colored snub-nose .38 caliber paltik with two (2) live ammunitions. In fact, the hand gun subject matter of Criminal Case No. 32861 fits the description of the gun seen by Elmo Flores in the possession of accused Ramos at the time and place material to Criminal Case No. 32861.

x x x

Lastly, the prosecution in Criminal Case No. 32862 were (sic) able to establish that accused Ramos and Contreras together with their co-perpetrators, took the Ford Fierro (sic) of Leoncio Flores after the perpetration of the robbery in the residence of Elmo Flores.

In all the cases, the defense failed to show any ulterior or false motive on the part of prosecution witnesses to testify against the accused. 'Witnesses who have no evil motive to testify against the accused are credible' [People vs. Beltran, 138 SCRA 521 (1985)] and 'In the absence of convincing evidence that the prosecution's principal witness acted with improper motives, it is presumed that he was not so actuated and his testimony deserves full faith and credit' [People vs. Jutie, 171 SCRA 586 (1989)]. On the contrary, the prosecution witnesses were altogether consistent in corroborating each other's testimonies, and as such, they are reliable, therefore, their declaration merits credibility.

In the light of the foregoing, the Court is of the belief that the evidence adduced by the prosecution in the four (4) aforementioned cases is both substantial and convincing." [20]

On 11 April 1991, counsel for accused Ramos and Contreras posted with the Central Post Office of Manila a Notice of Appeal wherein the said accused manifested their intention to appeal the decision to the Court of Appeals. The trial court received it on 16 April 1991,[21] and on 19 April 1991 it issued an order allowing the appeal and ordering the elevation of the records to the Court of Appeals.[22] Considering, however, that the highest of the penalties imposed is reclusion perpetua, the Court of Appeals forwarded to this Court the records of the cases.[23] This Court accepted the appeal in the Resolution of 20 November 1991.[24]

Before going any further, the Court has to resolve the propriety of the instant appeal insofar as accused Antonio Contreras is concerned. As earlier stated, the trial court promulgated the joint decision on him in absentia for the reason that he "jumped bail." [25] This is inaccurate for the original records of these cases disclose that the bail bonds dated 27 September 1989 filed for the temporary liberty of Contreras and Ramos in Criminal Cases Nos. C-32860(89), C-32862(89) and C-32863(89), and of Ramos in Criminal Case No. 32861(89), purportedly underwritten by the Country Bankers Insurance Corporation (CBIC), were, upon motion of the latter, ordered cancelled by the trial court on 6 November 1989[26] because, *inter alia*, it (CBIC) did not issue the bail bonds. CBIC claimed that the alleged signatures therein of its Senior Vice-President, Servillano C. Mendoza, and of the

notary public, Romeo G. Velasquez, are not their genuine signatures.[27] The trial court also issued a warrant of arrest for the immediate apprehension of Ramos and Contreras.[28] Their motion to reconsider the order and set aside the warrant of arrest was denied by the trial court in its Order of 12 February 1990 wherein it explicitly declared that the questioned bail bonds "are fake and, therefore, void ab initio." [29] On 13 March 1990, the accused filed with the Court of Appeals a special civil action for certiorari to set aside the trial court's order of cancellation of their bail bonds and its issuance of the warrant for their arrest.[30] The petition was docketed as CA-G.R. SP No. 20242. On 21 February 1990, the Court of Appeals issued therein a temporary restraining order.[31] However, on 29 June 1990, it promulgated a decision dismissing the petition for lack of merit.[32] A motion for its reconsideration was denied in the Resolution of 28 September 1990.[33] Accused then filed with this Court a petition for review to set aside the above decision and resolution which was docketed as G.R. No. 95524. In the Resolution of 3 December 1990, this Court resolved to deny the petition, "the issue raised being factual and for insufficient showing of any reversible error on the questioned decision of respondent court." [34]

Further examination of the original records of these cases likewise reveals that the above questioned bail bonds were purportedly approved by then 2nd Vice Executive Judge Artemon D. Luna of Branch 32 of the RTC of Manila on "10/28/89" [35] -- that is, 28 October 1989 -- and that the orders for the release of the accused on the strength of such bail bonds were purportedly issued on 28 September 1989 by one Josefino A. Corpus, Branch Clerk of Court of Branch 32 of the RTC of Manila.[36] In their own petition in CA-G.R. SP No. 20242 and in G.R. No. 95524, the accused do not even claim to have paid the premium on the bail bonds.

In the light of the foregoing, it is beyond dispute that the questioned bail bonds are, as correctly described by the trial court, "fake," and even granting for the sake of argument that they were in fact approved by Judge Luna, such approval did not render them valid and binding. Moreover, the so-called orders of release, signed by Branch Clerk of Court Josefino A. Corpus, were void ab initio not only because he has no authority to do so, but also because he issued them before the bail bonds were allegedly approved by Judge Luna. Being the parties directly benefited by the issuance of the bail bonds and the orders of release, the accused were then co-conspirators in the irregular and illegal procurement of the bail bonds and the issuance of the orders of release. The conclusion is inevitable that the accused submitted fake bail bonds to gain freedom from detention. Thus, the accused did not merely "jump" bail; for all legal intents and purposes, they escaped from detention.

Only accused Felimon Ramos was re-arrested after the cancellation of the bail bonds. Accused Antonio Contreras has successfully eluded re-arrest. Despite the issuance by the trial court of an alias warrant of arrest on 26 March 1991, Contreras has remained at large. He has clearly made a mockery of the judicial process and must be deemed, pursuant to the ruling in *People vs. Mapalao*, [37] to have waived or forfeited his right to appeal from the joint decision of the trial court. Although in *People vs. Martinado* [38] We declined to give retroactive application to the said ruling, We cannot do likewise for Contreras for the reason that the facts and circumstances obtaining in *Martinado* are entirely dissimilar to those in these cases. Accordingly, the appeal interposed by accused Antonio Contreras y Ramos is hereby dismissed.

Now to the appeal of Felimon Ramos.

In the Appellants' Brief filed on 3 April 1992, it is contended that the trial court:

In Criminal Case No. 32861 (Violation of P.D. No. 1866:

"I. x x x ERRED IN FINDING THAT THE TESTIMONIES OF PROSECUTION WITNESSES ARE CREDIBLE NOTWITHSTANDING THE SEVERAL MATERIAL INCONSISTENCIES THEREIN.

II. x x x GRAVELY ERRED IN ADMITTING THE GUN AS EVIDENCE AGAINST ACCUSED DESPITE THE EXPLICIT CONSTITUTIONAL EXCLUSIONARY RULE ON THIS POINT.

III. x x x GRAVELY ERRED IN FINDING THAT ACCUSED RAMOS' GUILT WAS PROVEN BEYOND REASONABLE DOUBT.

IV. x x x GRAVELY ERRED IN NOT ACQUITTING ACCUSED RAMOS OF THE CRIME CHARGED."[39]

In Criminal Cases Nos. 32860, 32862 and 32863 (Robbery in Band, Carnapping & Robbery):

"I. x x x GRAVELY ERRED IN FINDING THAT ACCUSED APPELLANTS WERE POSITIVELY IDENTIFIED AS AMONG THE CULPRITS IN THE ABOVE-ENTITLED CASES

II. x x x GRAVELY ERRED IN FINDING THAT ACCUSED APPELLANTS WERE GUILTY FOR (sic) THE CRIMES/OFFENSES CHARGED BEYOND REASONABLE DOUBT."[40]

RE: CRIMINAL CASE NO. 32861(89)

In support of his first assigned error, Ramos impugns the credibility of prosecution witness P/Sgt. Lardizabal because of material inconsistencies in his testimony. Moreover, since it was Pat. Rodillas who frisked him and found the subject handgun in his person and possession, Ramos argues that it is Rodillas and not Lardizabal who should have been presented since the former was a material witness who could identify the handgun and testify about it. Ramos imputes to the prosecution a sinister motive in not presenting Rodillas, and claims that it withheld a vital piece of evidence.[41]

As to the second assigned error, Ramos maintains that when he was accosted by the police and found carrying a gun, the lawmen were not armed with either a search warrant or warrant of arrest. Hence, the frisking and subsequent seizure of the gun were not justified and the gun is not admissible in evidence as against him.

As to the third and fourth assigned errors, he alleges that the prosecution miserably failed to prove his guilt beyond reasonable doubt. He asseverates that he should have been acquitted. Specifically, he claims that in the prosecution for illegal possession of firearms, the lack of license or authority to possess it is an essential ingredient of the offense which must be proved by the prosecution as held in *People vs. Pajenado*. [42]

RE: CRIMINAL CASES NOS. C-32860(89), C-32862(89) AND C-32863(89)

In Criminal Case No. C-32860(89), the accused maintain that they were not positively identified as among the culprits because there were inconsistencies in the testimonies of the prosecution witnesses on whether or not the perpetrators of the crimes were wearing handkerchiefs over their faces and it was highly improbable that Punzalan, who was chased by armed men, could positively identify his pursuers while running away from them.

In Criminal Cases Nos. C-32862(89) and C-32863(89), the accused insist that Elmo Flores and Noel Flores were not able to positively identify the culprits and that the policemen merely induced them to point to the accused as the perpetrators when they were presented at the police precinct.

The assigned errors revolve on the following matters, viz., the identification of the accused, more particularly of appellant Ramos, and the validity of the frisking, the seizure of the "paltik" gun and its admissibility in evidence.

The issue of identification is a factual one and involves the credibility of the witnesses. It is a juridical dictum that the credibility of witnesses is to be resolved primarily by the trial court which had the opportunity to observe their demeanor and manner of testifying during the trial.[43] Accordingly, the trial court's findings on the matter of the credibility of witnesses are entitled to the highest degree of respect[44] and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[45]

After a careful review of the records of the cases and the testimonies of the witnesses, We find no cogent reason to disturb the factual findings of the trial court.

The testimonies of Reynaldo Punzalan, Elmo Flores and Noel Flores, who identified the accused as among the perpetrators of the crimes, were credible and consistent with common human experience. The discrepancies alleged by the defense in the said testimonies, such as the color of the pants or hats the perpetrators wore, whether they wore watches or not, or whether they had scars on their faces or not, refer to minor or even inconsequential particulars which do not invalidate the positive identification of the accused. In fact, the said minor inconsistencies even tend to strengthen rather than weaken the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony.[46] It is not true, as insinuated by the accused, that Punzalan could not have properly identified his attackers while he was chased by them. He had already recognized them when they were menacingly approaching him as he was about to alight from his car. When Punzalan saw Ramos on 17 May 1989 at the Miranda Subdivision, he immediately pointed him out to the police team as one of the robbers. As to the identification of accused Ramos by Elmo Flores and Noel Flores, the former conveniently forgets that the handkerchief which covered his face dropped and his identity was thus unmasked.

That the prosecution witnesses were coached by the policemen during the confrontation is plain speculation; nothing in the evidence supports it. No ulterior motive was shown for the policemen to do so, if indeed they did, and no irregularity in their conduct of the investigation was proved.

Finally, the records are bereft of any evidence which would show any ill motive on the part of the prosecution witnesses to testify against the accused. It is settled that where there is no evidence to indicate that the principal witnesses for the prosecution were actuated by any improper motive, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[47]

Anent Criminal Case No. 32861(89), We are not persuaded by the contention of Ramos that the frisking and seizure of the gun tucked on his waistline were illegal for having been done without a valid search warrant and that, as a consequence, the gun is inadmissible in evidence pursuant to Sections 2 and 3(2), Article III of the 1987 Constitution.

The rule is that a search may be conducted by law enforcers only on the strength of a search warrant validly issued by a judge. This is enshrined in the Bill of Rights.[48] Such a rule, however, is not without exceptions.[49] For instance, a warrantless search may be validly made as an incident to a lawful arrest[50] or in stop and search situations.[51] Another recognized exception is when the accused himself waives his right against unreasonable search and seizure. As this Court stated in *People vs. Malasugui*: [52]

"When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof (Cooley, *Constitutional Limitations*, 8th ed., vol. I, page 631.) The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly."

The evidence for the prosecution clearly discloses that accused Ramos voluntarily allowed himself to be frisked and that he gave the gun to Pat. Alfredo Rodillas. This evidence remained unrebutted by Ramos because his testimony on cross-examination was, as earlier noted, stricken off from the records. Moreover, his counsel did not object to any of the questions asked during the direct examination of witness Lardizabal concerning the frisking of Ramos and the recovery from him of the gun.[53] On cross-examination, counsel for Ramos did not suggest or insinuate, even obliquely, that Ramos did not voluntarily allow himself either to be frisked or dispossessed of the gun by Pat. Rodillas.[54]

That the prosecution did not present Pat. Rodillas as a witness despite the fact that he was the one who frisked

Ramos is not fatal to the prosecution's cause. Lardizabal was himself an eyewitness to the frisking and seizure of the gun. Hence, the testimony of Rodillas may be dispensed with for being merely corroborative.[55]

We agree, however, with accused Ramos that in Criminal Case No. C-32861 (89), the prosecution failed to prove that he has no license or permit to possess the firearm subject thereof. The information therein specifically alleges that the said accused:

"x x x without any lawful authority did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) .38 caliber Revolver marked S&W without Serial Number, (Paltik), 5 Shooters, Snub Nose, with two (2) live cartridges in its cylinder, without first securing the necessary license or permit, to possess the same."

Yet, the prosecution presented no evidence, oral or documentary, that Ramos had no license or permit to possess the subject firearm.

In *People vs. Tiozon*,[56] this Court held that under Section 1 of P.D. No. 1866 (under which accused Ramos is charged in Criminal Case No. C-32861(89)), the lack or absence of a license is an essential ingredient of the offense which the prosecution must allege and prove; hence, for failure of the prosecution therein to prove that Tiozon had no such license, he could not be held guilty of illegal possession of a firearm. We held therein thus:

"Undoubtedly, there is unlawful possession under the foregoing section if one does not have the license to possess the firearm. Even if he has the license, he cannot carry the firearm outside his residence without legal authority therefor. It follows then that the lack or absence of a license is an essential ingredient of the offense which the prosecution must allege and prove. Every element of the crime must be alleged and proved."[57]

In *People vs. Pajenado*,[58] We said:

"It is true that *People vs. Lubo*, 101 Phil. 179 and *People vs. Ramos*, 8 SCRA 758 could be invoked to support the view that it is incumbent upon a person charged with illegal possession of a firearm to prove the issuance to him of a license to possess the firearm, but We are of the considered opinion that under the provisions of Section 2, Rule 131 of the Rules of Court which provide that in criminal cases the burden of proof as to the offense charged lies on the prosecution and that a negative fact alleged by the prosecution must be proven if 'it is an essential ingredient of the offense charged,' the burden of proof was with the prosecution in this case to prove that the firearm used by appellant in committing the offense charged was not properly licensed.

It cannot be denied that the lack or absence of a license is an essential ingredient of the offense of illegal possession of a firearm. The information filed against appellant in Criminal Case No. 3558 of the lower court (now G.R. No. 27681) specifically alleged that he had no 'license or permit to possess' the .45 caliber pistol mentioned therein. Thus it seems clear that it was the prosecution's duty not merely to allege that negative fact but to prove it. This view is supported by similar adjudicated cases. In *U.S. vs. Tria*, 17 Phil. 303, the accused was charged with having criminally inscribed himself as a voter knowing that he had none of the qualifications required to be a voter. It was there held that the negative fact of lack of qualification to be a voter was an essential element of the crime charged and should be proved by the prosecution. In another case (*People vs. Quebral*, 68 Phil. 564) where the accused was charged with illegal practice of medicine because he had diagnosed, treated and prescribed for certain diseases suffered by certain patients from whom he received monetary compensation, without having previously obtained the proper certificate of registration from the Board of Medical Examiners, as provided in Section 770 of the Administrative Code, this Court held that if the subject of the negative averment like, for instance, the act of voting without the qualifications provided by law is an essential ingredient of the offense charged, the prosecution has the burden of proving the same, although in view of the difficulty of proving a negative allegation, the prosecution, under such circumstance, need only establish a prima facie case from the best evidence obtainable. In the case before Us, both appellant and the Solicitor General agree that there was not even a prima facie case upon which to hold appellant guilty of the

illegal possession of a firearm. Former Chief Justice Moran upholds this view as follows:

“The mere fact that the adverse party has the control of the better means of proof of the fact alleged, should not relieve the party making the averment of the burden of proving it. This is so, because a party who alleges a fact must be assumed to have acquired some knowledge thereof, otherwise he could not have alleged it. Familiar instance of this is the case of a person prosecuted for doing an act or carrying on a business, such as, the sale of liquor without a license. How could the prosecution aver the want of a license if it had acquired no knowledge of that fact? Accordingly, although proof of the existence or non-existence of such license can, with more facility, be adduced by the defendant, it is nevertheless, incumbent upon the party alleging the want of the license to prove the allegation. Naturally, as the subject matter of the averment is one which lies peculiarly within the control or knowledge of the accused prima facie evidence thereof on the part of the prosecution shall suffice to cast the onus upon him.” (6 Moran, Comments on the Rules of Court, 1963 edition, p. 8).”

Hence, there being no proof that Ramos did not have a license or permit to possess the firearm in question, he could not be convicted of illegal possession of a firearm.

We do not agree with the contention of the Solicitor General that since a paltik is a homemade gun, is illegally manufactured as recognized in *People vs. Fajardo*,^[59] and cannot be issued a license or permit, it is no longer necessary to prove that it is unlicensed. This appears to be, at first blush, a very logical proposition. We cannot, however, yield to it because Fajardo did not say that paltiks can in no case be issued a license or a permit, and that proof that a firearm is a paltik dispenses with proof that it is unlicensed.

However, We agree with the Office of the Solicitor General that the penalty of reclusion perpetua imposed by the trial court on accused Ramos in Criminal Case No. C-32860 (89) for robbery in band is erroneous. The robbery committed is that defined and penalized in subdivision 5 of Article 294 (simple robbery) in relation to Articles 295 and 296 of the Revised Penal Code. The circumstances or conditions in subdivisions 1 to 4 of Article 294 are not present in the said case. The penalty imposable in subdivision 5 is "prision correccional in its maximum period to prision mayor in its medium period." Since the crime was committed by a band, and the accused and his co-accused Antonio Contreras undoubtedly appear to be the leaders of the band, the penalty imposable should, pursuant to the last paragraph of Article 295 of the Code, be "the penalty next higher in degree," or prision mayor in its maximum period to reclusion temporal in its medium period. The offender shall, pursuant to Article 295, be "punished by the maximum period of the proper penalties." Applying the Indeterminate Sentence Law, and further appreciating against him the generic aggravating circumstance of nighttime which, although not alleged in the information, was duly established without objection on his part, accused Ramos shall then be meted with an indeterminate penalty ranging from six (6) years of prision correccional maximum as MINIMUM to seventeen (17) years of reclusion temporal medium as MAXIMUM.

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1. Insofar as accused ANTONIO CONTRERAS y RAMOS is concerned, DISMISSING the appeal;
2. Insofar as accused FELIMON RAMOS y SAN ROQUE is concerned:

- a) ACQUITTING him in Criminal Case No. C-32861(89), with costs de oficio;
- b) AFFIRMING the rest of the joint decision, except with respect to Criminal Case No. C-32860(89) which is hereby modified by reducing the penalty therein imposed from reclusion perpetua to an indeterminate penalty ranging from six (6) years of prision correccional maximum as MINIMUM to seventeen (17) years of reclusion temporal medium as MAXIMUM, with costs against the said accused;

3. Directing the National Bureau of Investigation to conduct a thorough investigation on the submission of the

fake bail bonds allegedly issued by Country Bankers Insurance Corporation for accused Felimon Ramos y San Roque and Antonio Contreras y Ramos in Criminal Cases Nos. C-32860(89), C-32861(89), C--32862(89) and C-32863(89) of Branch 131 of the Regional Trial Court of Kalookan City, determine the parties liable therefor, and submit its recommendations thereon within three (3) months from receipt of a copy of this decision; and

4. Directing the Clerk of Court of this Court to immediately furnish the Director of the National Bureau of Investigation with a copy of this decision.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 1-2; 4; 5-6.

[2] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, And Imposing Stiffer Penalties for Certain Violations Thereof And For Relevant Purposes.

[3] Otherwise known as the Anti-Carnapping Act.

[4] OR, 1.

[5] Id., 3.

[6] OR, 4.

[7] Id., 5.

[8] OR, 7.

[9] Id., 20; 22.

[10] Id., 160.

[11] Id., 363.

[12] Id., 382-393.

[13] OR, 392.

[14] Order of the trial court of 26 March 1991; Id., 394.

[15] Appellee's Brief, 2-7; Rollo, 93.

[16] OR, 363.

[17] TSN, 5 September 1989, 6.

[18] Id., 9-10.

[19] Id., 11.

[20] Rollo, 40-42.

[21] OR, 410.

- [22] Id., 411.
[23] Rollo, 1.
[24] Id., 44.
[25] Order of the trial court of 26 March 1991; OR, op. cit., 394.
[26] Id., 171.
[27] Id., 165-169.

[28] OR, 172.

- [29] Id., 256.
[30] Id., 182-195.
[31] Id., 179-180.
[32] Id., 278-282.
[33] Id., 307.
[34] Id., 355.
[35] OR, 94; 102; 108; 117; 126; 137 and 145.
[36] Id., 92; 115; 124 and 135.

[37] 197 SCRA 79 [1991].

- [38] G.R. No. 92020, 19 October 1992.
[39] Rollo, 60.
[40] Id., 66.
[41] Citing Ching Sui Yong vs. Intermediate Appellate Court, 191 SCRA 187 [1990].

[42] 31 SCRA 812 [1970].

- [43] People vs. Verzo, 65 SCRA 324 [1975]; People vs. Garcia, 89 SCRA 440 [1979]; People vs. Bautista, 92 SCRA 465 [1979]; People vs. Abejuela, 92 SCRA 503 [1979]; People vs. Pido, 200 SCRA 45 [1991]; People vs. Pama, G.R. Nos. 90297-98, 11 December 1992.
[44] People vs. Estenzo, 72 SCRA 428 [1976]; People vs. Cabiling, 74 SCRA 285 [1976]; People vs. Marcina, 77 SCRA 238 [1977]; People vs. Villamala, 78 SCRA 145 [1977]; People vs. Sanchez, 199 SCRA 414 [1991].
[45] People vs. Gonzaga, 77 SCRA 140 [1977]; People vs. Oñate, 78 SCRA 42 [1977]; People vs. Ramos, 167 SCRA 476 [1988]; People vs. Payumo, 187 SCRA 64 [1990]; People vs. Vocente, 188 SCRA 100 [1990]; People vs. Florida, G.R. No. 90254, 24 September 1992.
[46] People vs. Salufrania, 159 SCRA 401 [1988]; People vs. Cabato, 160 SCRA 98 [1988]; People vs. Custodio, 197 SCRA 538 [1991].

[47] *People vs. Simon*, 209 SCRA 148 [1992], citing several cases.

[48] Article III, Section 2, 1987 Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

[49] *People vs. CFI of Rizal*, 101 SCRA 86 [1986].

[50] Section 12, Rule 126, Revised Rules of Court; *People vs. Malmstedt*, 198 SCRA 401 [1991].

[51] *Valmonte vs. De Villa*, 185 SCRA 665 [1990]; *Posadas vs. Court of Appeals*, 188 SCRA 288 [1990].

[52] 63 Phil. 221, 226 [1936]. See also, *Vda. de Garcia vs. Locsin*, 65 Phil. 689 [1938]; *People vs. Donato*, 198 SCRA 130 [1991]; *People vs. Rodriguez*, 205 SCRA 791 [1992]; *People vs. Omaweng*, G.R. No. 99050, 2 September 1992.

[53] TSN, 17 July 1989, 7; 12.

[54] *Id.*, 13-16.

[55] *People vs. Fernandez*, 209 SCRA 1 [1992].

[56] 198 SCRA 368 [1991].

[57] *People vs. Gy Gesiong*, 60 Phil. 614 [1934].

[58] *Supra.*, at 816-817.

[59] 17 SCRA 494 [1966].

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