PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRENETO CERVETO Y CONTADO, JOHN DOE AND PETER DOE, ACCUSED. FRENETO CERVETO Y CONTADO, ACCUSED-APPELLANT.

G.R. Nos. 127173-74. September 30, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

FRENETO CERVETO y CONTADO, JOHN DOE and PETER DOE were charged with robbery with homicide and frustrated homicide before the Regional Trial Court of Valenzuela, Metro Manila. The Information alleged that on 10 July 1995 the three (3) accused, conspiring together, with intent to gain and by means of force and intimidation, took away P700.00 belonging to Sixto Comia and a necklace and a bracelet worth P9,000.00 and P8,000.00, respectively, belonging to Alfredo Torres, and that on the occasion of the robbery and in order to run off with their heist the accused shot and killed SPO1 Leonardo San Diego and caused serious physical injuries on one Bismarck Juinio y Sebastian.[1] Freneto Cerveto was additionally charged with violation of PD 1866 (Illegal Possession of Firearms) for having in his possession and control during the perpetration of the robbery with homicide and frustrated homicide a .38 caliber "Smith and Wesson" revolver (paltik) without any authority of law.[2]

The real identities and whereabouts of John Doe and Peter Doe have remained unascertained; thus, only Freneto Cerveto stood trial.

On 30 October 1996 the trial court in a joint decision convicted Cerveto of robbery with homicide in the first case, and sentenced him to reclusion perpetua and to pay the costs. He was also directed to pay the heirs of SPO1 San Diego P95,014.50 as actual expenses for the wake, burial lot and funeral services plus P50,000.00 as death indemnity, and to Alfredo Torres P17,000.00 representing the total value of the necklace and the bracelet forcibly taken from him.

In the second case, for violation of PD 1866 (Illegal Possession of Firearms) Freneto Cerveto was sentenced to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as minimum, to twenty (20) years of reclusion temporal as maximum, and to pay the costs. The "paltik" was confiscated in favor of the government and the Branch Clerk of Court of the court a quo was instructed to turn it over to the Philippine National Police (PNP) Firearms and Explosives Division for proper disposition after the finality of the decision. As for the serious physical injuries allegedly sustained by Bismarck Juinio y Sebastian, the trial court ruled that the prosecution failed to substantiate the charge.[3]

The facts: In the evening of 10 July 1995 an airconditioned Philippine Rabbit bus left its terminal in Rizal Avenue, Sta. Cruz, Manila, bound for San Fernando, Pampanga. At around ten o'clock that evening, while cruising along North Expressway, Valenzuela, Metro Manila, the bus conductor, Sixto Comia, started to collect the fares. But Cerveto, occupying the last seat at the back for three (3) passengers and wearing a green chaleko, told Comia he was bound for Tarlac. Since the trip, per schedule, was not going that far, Comia advised Cerveto

to disembark instead in Camachile. Comia then collected the fare from the person beside Cerveto and from the two (2) others occupying the opposite seat who were all bound for Dau, Pampanga. Comia assumed that the four (4) were companions as they boarded the bus in the terminal at the same time and occupied the rear seats. As Comia continued collecting the fares, he heard one of them shout, "Holdup, lie down!" Comia was only a meter away from them. The scary announcement prompted driver Esteban Sanchez to stop and park the bus at the left island of the expressway under the Torres Bugallon overpass. Cerveto stood up and pointed a gun at the passengers. Someone shoved Comia as a holdup man grabbed Comia's collections amounting to more than P700.00. John Doe and Peter Doe, two (2) of Cerveto's companions, then divested the passengers of their valuables. Taken from Alfredo Torres were his necklace and bracelet worth P9,000.00 and P8,000.00, respectively.

In a few moment, gunshots rang out inside the bus. As the air cleared the sight of two (2) inert bodies startled the passengers - SPO1 San Diego who was seated beside driver Sanchez, and an unidentified holdup man who was slumped on the seat behind Sanchez. They appeared to have engaged in a duel. Cerveto's other companions, although armed, panicked. They broke the glass window at the left rear side of the bus and jumped out. Cerveto remained inside the bus. Still holding his gun he squeezed himself ("sumiksik") in the sixth seat from the driver and sat beside Florentino Flores, a passenger. Cerveto placed his gun on the floor under Flores' feet but the latter kicked the gun toward the window for fear that Cerveto would retrieve it and shoot him instead.

When the policemen arrived at the crime scene they commanded the passengers to get down from the bus by forming a line and holding their hands up. Upon hearing the order, Cerveto removed his chaleko. While thus lining up, four (4) passengers pointed to Cerveto as one of the holdup men. SPO4 Tomas Paguntalan Jr. frisked Cerveto but did not find any stolen goods in his possession. The police officer saw a gun under the fifth seat from the driver's seat, but it was SPO4 Redentor Bote who recovered it, along with a black gun holster and a green vest jacket labeled "Kleider" between the next two (2) seats behind. The gun had not been fired as it had no spent shells. SPO4 Camilo Rimbawa, Chief Clerk of the Records Branch, PNP Firearms and Explosives Office, certified that Cerveto was not a licensed firearm holder of any kind and caliber.

Accused-appellant Freneto Cerveto presented a totally different scenario. According to him, he happened to be at the Valenzuela police station during the date and time of the incident as he was inquiring about the jeepney station where he could get a ride for Novaliches where he was staying with his sister. He had lost his way from his place of work since he arrived in Manila for the first time only two (2) days before the incident. He said that a policeman volunteered to take him to the jeepney station. But the accommodation turned out to be an incriminatory machination. The policeman forced him to ride in a Philippine Rabbit bus parked in front of the police station. His hands were tied at his back while a news reporter took pictures. He was told to occupy one of the seats. When he looked down he saw a gun under the seat and he was ordered to pick it up. Another picture was taken of him. When he refused to take the gun, he was boxed on the stomach. Afterwards, he was told to go down the bus and brought back to the police station where he was detained and then charged.

The trial court disregarded the defense of Cerveto because of his vacillation on the number of times he had gone to his place of work, the circumstance that he did not know the name and location thereof, and certain inconsistencies in his narrations. On account of his having been positively identified by the prosecution witnesses as one of the holdup men and carrying a gun, and the certification that he was a non-licensee of any kind and caliber of firearm, his conviction for the two (2) crimes with which he was charged became a logical consequence.

In this appeal, accused-appellant Cerveto assails the testimony of Comia as he argued that he could not have been a companion nor a co-conspirator of the holdup men since he was bound for Tarlac while his supposed cohorts were headed for Dau, Pampanga. He adds that if he was really one of the robbers he could have easily escaped

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since he was armed with a gun and had some thirty (30) minutes to do so. He then banks on the testimony of passenger Flores that he did not see him actually committing robbery with homicide, as well as on the testimony of SPO4 Paguntalan Jr. that no stolen goods were found in his possession.

We are not persuaded. We are here concerned not with conspiracy in destination, but with conspiracy in the commission of robbery with homicide. Conductor Comia may have testified that Cerveto was destined for a place different from that of the three (3) other holdup men yet this circumstance does not at all disprove community of design in the commission of the crime. Comia distinctly pictured Cerveto's participation in the conspiracy to rob him and the passengers thus -

Q: Now you stated that while your bus was travelling from Manila to San Fernando, Pampanga you experienced a hold-up, what is (sic) that hold-up and how were you held-up?

A: While I was then in the process of collecting fares from the passengers then somebody declared a hold-up.

> Q: Do you remember the place when you first heard the shout "hold-up"?
>
> A: We were then under the bridge of Torres Bugallon, Valenzuela, Metro Manila.
>
> Q: Now, in what particular place inside the bus were you at the time you heard a person declared (sic) hold-up?
>
> A: I was then almost at the rear portion of the bus, and the holdaper (sic) were seated in front of the back seat, last three(3) seater for three passengers x x x x
>
> Q: And where were you? How many seats from the back seat?
>
> A: Fourth seat from the back seat.
>
> Q: How far were you from the seat where these holdapers (sic) were seated?
>
> (At this juncture, the witness is pointing to the distance.)
>
> COURT: How do you estimate?
>
> A. About one (1) meter where the holdaper (sic) were seated.
>
> FISCAL RAZON:
>
> Q: What about the lighting condition of the bus when you heard the person declared (sic) hold-up?
>
> A: The light (sic) were on.
>
> Q: From the place where you were to the place where the holdaper (sic) were seated, a meter away from you, were you able to see the holdapers (sic)?
>
> A: Yes, sir, I can recognize one of the holdaper (sic).
>
> Q: Now, if he is inside this Court room, will you be able to point to him?
>
> A: Yes, sir.
>
> Q: Will you kindly do so.
>
> (Witness pointing to a man inside the Court room whom (sic) when asked his name, answered: Freneto Cerveto) x x x x
>
> FISCAL RAZON:

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Q: Now, you stated that you heard a person announced (sic) "hold-up, lie down", do you remember who made that announcement?

A: The holdaper (sic). I do not know who among the holdapers (sic) who shouted "hold-up, lie down" x x x x

FISCAL RAZON:

Q: How many holdaper (sic) were there?

A: They were four, sir.

Q: And the person whom you identified was one of them?

A: Yes, sir, I am sure x x x x

Q: Now, you stated that you are very sure that the person whom you identified to be Cerveto was one of the holdaper (sic). Now, do you still remember what was he wearing at that time?

A: Yes, sir, he was wearing chaleko colored green x x x x

FISCAL RAZON:

Q: If ever that green chaleko which according to you was being worn by the accused in these cases is shown to you, could you be able to identify it or recognize the same?

A: Yes, sir.

Q: Now, showing to you this chaleko colored green, will you kindly examine the same and tell this Court what relation does it have to the one which was worn, according to you, by one of the accused in these cases?

A: Yes, sir, this belonged to the accused x x x x

Q: Why (sic) made you sure that this is the one being worn by the accused?

A: Because when someone announced hold-up the accused who was then standing was holding a gun and wearing that chaleko.

Q: Now, according to you, this person was holding a gun to whom was it pointed.

A: It was pointed to the passengers.

Q: When the gun was being pointed to the passengers, what did you do?

A: I was taken aback when someone[4] grabbed the money that I was then holding x x x x

FISCAL RAZON:

Q: Now, if you remember where did these four (4) holdapers board your bus?

A: They boarded from our terminal at Manila Avenida x x x x

Q: When they boarded the bus, were they together the four (4) accused?

A: What I could remember is that in the last seat for three (3) passengers, the accused and one of the holdaper (sic) were seated and the other two holdapers (sic) were seated opposite besides (sic) the seat.

Q: Which seat? At the left side?

A: Yes, sir. They boarded the bus simultaneously x x x x

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Q: Please tell us what is your basis in saying, considering that there were more than 61 persons boards (sic) the bus that these persons boarded together?

A: Because when these four (4) holdapers (sic) boarded the bus they proceeded at the back. Because the seat at the front were all occupied.[5]

The vital portions of Comia's testimony dealt with the circumstances that when someone announced, "Holdup, lie down!" he saw Cerveto standing a meter away from him with a gun pointed at the passengers; then a holdup man grabbed the money he was holding. On the other hand, Torres testified that two (2) other holdup men took his necklace and bracelet. Such conduct indicated cooperation with one another and adequately established complicity. All of them had the same purpose and were united in its execution.[6] Where conspiracy had been established all the conspirators are liable as co-principals regardless of the manner and extent of their participation since, in point of law, the act of one would be the act of all.[7]

After hearing gunshots, Flores saw Cerveto for the first time. From the actuations of accused-appellant, as observed by Flores, the only conclusion that could indeed be drawn is that Cerveto was one of the holdup men -

Q: Now, when you were half asleep and heard shouting: "hold-up", what happened after that?

A: Somebody shouted to lie down.

Q: And after you heard the word "lie down", what did you do?

A: I bent my body to the left.

Q: And then what happened after that?

A: I heard gun shots.

Q: And after that what happened?

A: Somebody seated (sic) besides (sic) me carrying a gun.

Q: Why? Was there any vacant place?

A: None, sir.

Q: So, how did that person seat besides (sic) you when there is (sic) no longer vacant seat?

A: Somebody squeezed himself. (sumiksik)

Q: When you stated that the person squeezed himself beside(sic) you, what did you notice to (sic) that person.

A: He was holding a gun.

Q: What kind of firearm did you see being handled by that person?

A: I do not know, sir.

Q: Was it a short firearm or a long firearm?

A: Short firearm, sir.

Q: And after that what happened?

A: He placed his firearm at my feet.[8]

Q: Do you still remember how was this person attire (sic) at that time?

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A: He was wearing a chaleko.

Q: What is the color of the chaleko?

A: Colored green, sir.

Q: And after he place (sic) the firearm, which according to you, is a short firearm at your feet, what happened?

A: I kicked the firearm.

Q: To what portion of the bus did you kick the firearm?

A: Going towards the window x x x x

Q: If ever you see that person who squeezed himself besides (sic) you, could (sic) you be able to identify him?

A: Yes, sir.

Q: Will you kindly look around the Court room and point to him?

(Witness pointing to a man inside the Court room whom (sic) when asked his name, answered: Freneto Cerveto).[9]

Accused-appellant's hypothesis that he could have easily fled since he was purportedly armed with a gun is based on an inaccurate ascertainment of the narrations of the prosecution witnesses. It should be recalled that Flores, seated on the sixth seat from the driver's seat, kicked toward the window the gun placed by Cerveto under his feet. That same gun was later recovered by SPO4 Bote under the seat in front of Flores' seat. Thus, the fact that was established was that accused-appellant had already disarmed himself and it would have been quite a task for him to reach for his weapon. For him to have flown the coop might not have been that effortless.

The circumstance that accused-appellant opted to stay inside the bus for about thirty (30) minutes or until the arrival of the policemen should not be interpreted in his favor. We agree with the theory of the Office of the Solicitor General (OSG) that in squeezing himself beside Flores, Cerveto must have been stricken with fear thinking that he and his companions were no longer in control of the bus and that he might be hit by gunfire. He sought cover in the seats. And while doing so, an idea must have sparked not only to shield himself from the present danger but also to forestall future accusation. We also agree with the other theory of the OSG that Cerveto pretended to be one of the intended victims by dropping his gun under Flores' feet hoping that in the ensuing commotion nobody would recognize him. He even removed his chaleko when the policemen ordered all the passengers to alight from the bus, apparently to prevent identification. Although he did not flee, the Court considers this circumstance not as indicative of innocence but as a stratagem for his self-preservation.

Flores may not have seen Cerveto actually committing the robbery with homicide and SPO4 Paguntalan Jr. may not have found any loot in his possession; nevertheless, such omissions are insignificant because conductor Comia clearly witnessed and recounted the particular role played by accused-appellant.

The defenses of denial, frame-up and alibi are all inherently, or most frequently, weak defenses that are correctly rejected by trial courts.[10] Such defenses which belong to the same category require clear and convincing evidence in the face of the presumption that police officers acted in the regular performance of their official duties. More importantly, there is no showing that the policemen were actuated by improper motive when they arrested accused-appellant.[11] Those defenses are self-serving negative evidence that cannot be given greater weight than the declarations of credible witnesses who testified on affirmative matters.[12]

In spite of the circumstance that SPO1 San Diego was killed by the unidentified holdup man and the killing may

just have been an unfortunate complication not forming part of the original plan to rob, Cerveto and his co-conspirators are equally liable therefor. Whenever homicide has been committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals for the special complex crime of robbery with homicide, although they did not actually take part in the homicide.[13] Thus Cerveto was properly convicted of robbery with homicide. Article 294, par. (1), of the Revised Penal Code penalizes robbery with homicide with reclusion perpetua to death. In the absence of either mitigating or aggravating circumstance, the lesser penalty of reclusion perpetua was correctly imposed.[14]

Accused-appellant then bewails the failure of SPO4 Paguntalan Jr. to place any distinguishing mark on the gun that would have positively shown that it was the same gun recovered from the crime scene.

In illegal possession of firearms, two (2) elements must be established: (a) the existence of the subject firearm; and, (b) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess it.[15] The first requisite was satisfied since the subject firearm was identified in court by four (4) prosecution witnesses - Comia who saw accused-appellant pointing the gun at the passengers;[16] Flores who saw accused-appellant place the gun under his feet;[17] SPO4 Bote who recovered the gun under the fifth seat from the driver's seat;[18] and, SPO4 Paguntalan Jr. who saw the gun at the place where it was retrieved.

Accused-appellant's attack on the failure of SPO4 Paguntalan Jr. to put markings on the gun is flimsy. Had markings been so placed, that would have even made identification a cursive process. The second requisite was similarly satisfied since SPO4 Rimbawa certified and testified that accused-appellant was not a licensed holder of any kind or caliber of firearm. We therefore sustain accused-appellant's conviction for illegal possession of firearm in its simple form.

However, the penalty of seventeen (17) years, four (4) months and one (1) day of reclusion temporal as minimum, to twenty (20) years of reclusion temporal as maximum imposed by the trial court for the illegal possession of a low-powered firearm (.38 caliber paltik revolver) should be reduced pursuant to RA 8294 under which the imposable penalty should be prision correccional in its maximum period and a fine of not less than fifteen thousand pesos. Applying the Indeterminate Sentence Law, a prison term of four (4) years and two (2) months as minimum, to six (6) years as maximum[19] may be considered appropriate and reasonable.

WHEREFORE, the Decision appealed from finding accused-appellant FRENETO CERVETO Y CONTADO guilty of robbery with homicide and sentencing him to reclusion perpetua, to pay the legal heirs of SPO1 Leonardo San Diego P95,014.50 as expenses for the wake, burial lot and funeral service plus P50,000.00 for death indemnity, and to Alfredo Torres P17,000.00 for the total value of his necklace and bracelet, and to pay the costs, is AFFIRMED.

The conviction of accused-appellant Freneto Cerveto y Contado for illegal possession of firearm is likewise AFFIRMED with the MODIFICATION that his prison term imposed by the court a quo of seventeen (17) years, four (4) months and one (1) day of reclusion temporal as minimum, to twenty (20) years of reclusion temporal as maximum is reduced, conformably with RA 8294 and the Indeterminate Sentence Law, to four (4) years and two (2) months as minimum, to six (6) years as maximum, both of prision correccional, and to pay a fine of P15,000.00. The firearm, subject of illegal possession, is confiscated in favor of the government.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Information dated 13 July 1995; Records of Crim. Case No. 4979-V-95, p. 1.

[2] Information of even date; id.

[3] Decision penned by Judge Adriano R. Osorio, RTC-Br. 171; id., p. 103.

[4] Later clarified by Comia to be one of the holdup men; TSN, 11 September 1995, p. 15.

[5] TSN, 11 September 1995, pp. 4-6, 10, 17-18.

[6] People v. Hubilla Jr., G.R. No. 114904, 29 January 1996, 252 SCRA 471.

[7] People v. Salvatierra, G.R. No. 111124, 20 June 1996, 257 SCRA 489.

[8] Later clarified by Flores to be under his feet; TSN, 6 September 1995, p. 6.

[9] TSN, 1 September 1995, pp. 4-5.

[10] People v. Padao, G.R. No. 104400, 28 January 1997, 267 SCRA 64.

[11] People v. Constantino, G.R. No. 109119, 16 August 1994, 235 SCRA 384.

[12] People v. Padeo, G.R. No. 104400, 28 January 1997, 267 SCRA 64.

[13] People v. Silan, G.R. No. 116011, 7 March 1996, 254 SCRA 491.

[14] Article 63 (2), The Revised Penal Code.

[15] Padilla v. Court of Appeals, G. R. No. 121917, 12 March 1997, 269 SCRA 402.

[16] TSN, 11 September 1995, pp. 6-7.

[17] TSN, 1 September 1995, p. 6; 6 September 1995, p. 9.

[18] TSN, 30 October 1995, p. 14.

[19] Gonzales v. Court of Appeals, G. R. No. 95523, 18 August 1997, 277 SCRA 518.

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