PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. EUGENIO MARQUEZ Y BRIONES, JOSE MAGTIBAY, ANSELMO MAGTIBAY AND NICASIO BACOLO, ACCUSED, EUGENIO MARQUEZ Y BRIONES, APPELLANT.

G.R. Nos. 138972-73. September 13, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

We reiterate the doctrine that, in the assessment of the credibility of witnesses and their testimonies, the findings of trial courts deserve utmost respect.

The Case

Eugenio Briones y Marquez appeals the May 12, 1998 Judgment[1] rendered by the Regional Trial Court (RTC) of Lucena City, Branch 53. In Criminal Case No. 95-555, the RTC convicted him of frustrated robbery with homicide and frustrated homicide; and in Criminal Case No. 95-557, of illegal possession of firearm. The charges stemmed from a bus holdup, which resulted in the killing of the bus conductor and the wounding of a police officer on February 17, 1995.

In Criminal Case No. 95-555, appellant, Jose Magtibay, Anselmo Magtibay and Nicasio Bacolo were charged in an Amended Information dated November 22, 1995,[2] as follows:

> "That on or about the 17[th] day of February 1995, along Maharlika Highway at Barangay Sampaloc II, Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .38 `Smith & Wesson' revolver and bladed and pointed weapons, conspiring and confederating together and mutually helping one another, with intent to gain and to rob, by means of force, violence, threats and intimidation, did then and there willfully, unlawfully and feloniously hold-up JAC Liner bus with Plate No. NYE-839, thus performing all the acts of execution which should have produced the crime of robbery as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely intervention of SPO1 Rizaldy Merene, one of the passengers of said bus; and that on the occasion of said robbery, said accused, still in pursuance of their conspiracy, with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, and shoot with said firearm Joselito Estrareja Halum, the conductor of said bus, thereby inflicting upon the latter gunshot wound, which directly caused his death, and also inflicting gunshot wounds and injuries on vital part of the body of SPO1 Rizaldy Merene, thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said SPO1 Rizaldy Merene,

which prevented his death."[3]

In Criminal Case No. 95-557, appellant was indicted in an Information[4] dated May 24, 1995, as follows:

> "That on or about the 17[th] day of February 1995, at Barangay Sampaloc II, Municipality of Sariaya, Province

> of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) caliber .38 revolver `Smith and Wesson', by keeping and carrying the same without first securing the necessary license or permit, and further using the same in the commission of an offen[s]e."

During his arraignment,[5] appellant, assisted by Counsel de Oficio Uldarico Jusi, pleaded not guilty. The other accused, except Jose Magtibay, remained at large. The two cases were consolidated and tried jointly. Thereafter, on May 12, 1998, the trial court rendered its assailed Decision, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the Court in Criminal Case No. 95-555 finds Eugenio Marquez y Briones guilty beyond reasonable doubt of the crime of frustrated robbery with homicide and frustrated homicide punished under Article 297 of the Revised Penal Code and applying the Indeterminate Sentence Law, with no mitigating or aggravating circumstance present, Eugenio Marquez is sentenced to suffer reclusion perpetua and he is ordered to pay the costs.
>
> "Eugenio Marquez is ordered to pay the heirs of Joselito Halum P50,000.00 as death indemnity. He is also ordered to reimburse SPO1 Rizaldy Merene the sum of P9,000.00 which he incurred for his medical treatment.
>
> "The case against Jose Magtibay is dismissed for insufficiency of evidence. His release from detention unless he is being detained for another cause, is ordered.
>
> "In Criminal Case No. 95-557 the Court finds Eugenio Marquez y Briones guilty beyond reasonable doubt of the crime of illegal possession of firearm punished under Section I of Presidential Decree No. 1866 as amended by Republic Act No. 8294 and, applying the Indeterminate Sentence Law, [of] the commission of homicide as an aggravating circumstance. Eugenio Marquez is hereby sentenced to suffer the penalty of four (4) years and two (2) months of prision correccional as minimum to six (6) years of prision correccional as maximum and he is ordered to pay a fine of P15,000.00 and to pay the costs.
>
> "The officer-in-charge of this court is directed to deposit the caliber .38 revolver `Smith and Wesson' (Exhibit A in Criminal Case No. 95-555 and Exhibit A in Criminal Case No. 95-557) and the envelope with the three (3) live bullets and one slug (Exhibit A-1 in Criminal Case No. 95-555 and Exhibit A-1 in Criminal Case No. 95-557) with the Philippine National Police at Camp Nakar, Lucena City, in accordance with existing rules."[6]

The Facts

Version of the Prosecution

The solicitor general summarized the evidence for the prosecution in this wise:[7]

> "[O]n the evening of February 17, 1995, a JAC Liner bus driven by Modesto Ferrer with Joselito Halum as conductor was on its way from Metro Manila to Lucena City. Among the passengers was SPO1 Rizaldy Merene of the Southern Police District Command. Merene was seated directly behind the driver (TSN, p. 3, February 9, 1996). Another passenger, Manuel Fleta, occupied the third seat on the left side of the bus. When the bus reached the Mazapan junction in Barangay Santo Cristo, Sariaya, Quezon, four men boarded the bus (TSN, p. 6, September 9, 1996).
>
> "Two or three kilometers away from the Mazapan junction, two passengers stood up as if to alight from the bus (TSN, PP. 2-4, February 16, 1996[)]. When they reached the front portion of the bus, however, one of the men (later found to be appellant Marquez) poked a gun at the driver and announced a `hold-up.' His companion poked a knife at the conductor[.] Merene who was seated right behind quickly drew his firearm, but Marquez was able to fire at him first. Although hit, Merene returned fire. Panicking, Marquez and his companion jumped out of the bus. The conductor, Halum, fell to the floor of the bus, fatally wounded (TSN, pp. 4-7, February 9, 1996; pp. 7-8, September 9, 1996)[.]

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"After the hold-up men left the bus, Merene asked the driver to bring him to the nearest hospital where he was treated for his wound.

"Manuel Fleta, who witnessed the announcement of the hold-up and the exchange of fire between one of the hold-up men and SPO1 Merene, went to the PNP Sariaya station to report the incident. Chief of Police Concordio Tapulayan and PO3 Enrico Perez accompanied Fleta to the place where the incident happened and later to the Greg Hospital where SPO1 Rizaldy Merene was questioned (TSN, p. 12, December 16, 1996). While they were there, the police officers received a radio message from the Candelaria police station informing them that a wounded man was brought to the Bolaños Hospital in Candelaria (Ibid., at p. 13). This was followed by another broadcast declaring that the wounded man was transferred to the Quezon Memorial Hospital in Lucena City. With this information, PO3 Perez with two other policemen and Manuel Fleta went to the Quezon Memorial Hospital. At the emergency room there, Manuel Fleta identified the wounded man to the police officers as one of the hold-up men, Eugenio Marquez (TSN, pp. 14-15, December 16, 1996).

"At the time the hold-up inside the JAC Liner bus was taking place, spouses Mauricio and Zenaida Ilao and their children were watching a movie inside their house at Barangay Sampaloc II, Sariaya, Quezon. Their house was about 30 meters away from the Maharlika Highway and 100 meters away from the Lagnas bridge. A few minutes after the aborted hold-up (which the Ilao family was unaware of), a man suddenly appeared at the door of their house, naked above the waist, bloodied and asking for help (TSN, PP. 1-3, March 12, 1997). Mauricio asked the man if he knew a person in their barangay. The man mentioned the name of Julie Ann Veneñosa who, the couple knew, was working at the poultry farm nearby. Zenaida Ilao, accompanied by her daughter Irene, went to fetch Julie Ann. They returned with Julie Ann on board a jeep (Ibid., p. 4). When Julie Ann arrived, she recognized him as Eugenio Marquez and immediately brought him to the hospital in Candelaria (Ibid., at p. 5).

"The next morning, Mauricio Ilao was surprised to find a firearm at the back of their house. He immediately went to the Sariaya police station to report this. Four policemen went with him to his house where the .38 caliber gun with three live bullets was found (TSN, pp. 18-19, March 12, 1997)."

Version of the Defense

On the other hand, appellant's version of the incident is as follows:[8]

"On February 17, 1995, herein accused-appellant went to the house of Julie Anne Venenosa, a distant relative and friend, in Montecillo, Sariaya, Quezon. Upon arriving thereat at about 6:00 in the evening, he was informed by Gladys Venenosa, mother of Julie Anne, that the latter was still at her work. After spending some ten (10) minutes in that house, he decided to go to the place of work of Julie Anne in Sampaloc II at Max Tabangcora Poultry, and he went to the junction at Sto. Cristo, Sariaya to wait for any passenger vehicle, and after sometime he hailed and boarded an air-conditioned bus, JAC Liner, with plate No. NYE 839, which was then with many passengers. He boarded said bus alone. After he ha[d] boarded the bus some other six passengers also hailed and boarded said bus. Reaching the place of his destination at Sampaloc II, Sariaya, he stood up and walked towards the conductor to tell the latter that he was unboarding, but when he was barely two seats away from the driver, herein accused-appellant heard some[one] saying `hold-up ito', and saw a man poking his gun at the driver of the bus, and suddenly there was exchange of fire. He was about to go back to his seat but he was hit by a bullet. During the exchange of fire many of the passengers jumped out of the bus, and he also jumped out. After jumping out of the bus he saw a house, some twenty meters away, which [later], turned out to be owned by Zenaida Ilao, from whom he requested that his cousin Julie Anne Venenosa be fetched to take him to a hospital. First he was taken to Bolanos Hospital, then to Quezon Memorial Hospital, then later transferred to Philippine General Hospital, where he was confined for a week. When he was released from the hospital, he was taken by Sariaya Police to the Municipal Jail, and after two (2) months, he was transferred to the Provincial Jail[.] (TSN, Eugenio Marquez y Briones, August 11, 1997, pp. 3-10)

"When arraigned, he pleaded NOT GUILTY to the two (2) charges.

> "Prosecution presented its witnesses and rested its case, and so with the defense. Herein accused-appellant himself testified in open court."

The Trial Court's Ruling

In convicting appellant of frustrated robbery with homicide and frustrated homicide, the court a quo gave full faith and credence to the testimonies of the primary prosecution witnesses, SPO1 Rizaldy Merene and Manuel Fleta. It underscored their straightforward and cohesive identification of appellant as the culprit who had announced the holdup and exchanged gunfire with Merene, resulting in the wounding of the police officer and the killing of the bus conductor. The court a quo debunked the assertion of appellant that he was a mere passenger who had been injured in the crossfire. It was convinced that his actions and the circumstances surrounding the incident indubitably showed his participation in the attempted robbery, as well as in the consequent wounding of Merene and death of the bus conductor.

The trial court likewise found appellant guilty beyond reasonable doubt of illegal possession of firearm. It stressed the fact that the gun - which was subsequently identified by Merene as the weapon used in the attempted robbery -- was found at the back of Mauricio Ilag's house, the place where appellant had sought solace after being injured.

Hence, this appeal.[9]

The Assigned Errors

In his Brief, appellant bewails the following alleged errors of the trial court:

> "I
>
> In convicting the accused on the basis of the testimonies of SPO1 Rizaldy Merene and Manuel Fleta, despite grave contradictions on material points in their testimonies, and in concluding that appellant was the same person who engaged in fire fight with said police officer, despite absence of any direct evidence, or sufficient circumstantial evidence pointing at him as the person who announced the hold up and as the person who engaged in the exchange of fire with said police officer.
>
> "II
>
> In convicting the appellant of the crimes charged despite doubt as to his identity and culpability, and in not acquitting him on ground of reasonable doubt; in convicting the appellant under Section 1, PD 1866, despite the fact that the subject .38 revolver was not found in his possession."[10]

The Court's Ruling

The appeal is partly meritorious.

First Issue:
Credibility of Witnesses

In impugning the testimonies of Prosecution Witnesses SPO1 Rizaldy Merene and Manuel Fleta, appellant points out the alleged ambivalence of their testimonies. He contends that these two witnesses differed in their narrations with regard to the positions of the holduppers and the bus conductor during the holdup, even if the two were then seated near them. That Merene admitted during trial that he was not sure if he had shot the holdupper during their gunfight is also stressed by appellant. The latter further avers that, before the holdup was announced, Fleta had been watching a bus movie and, during the gunfight, was crouching to avoid being hit; thus, this witness was not in a position to identify the culprit.

We are not persuaded. True, there is a marked discrepancy between the testimonies of Merene and Fleta as

regards the whereabouts of the bus conductor before, during and immediately after the holdup. It must be noted, however, that the points of recall of the two witnesses were different. Merene was an active participant in the gunfight; thus, he could not be expected to remember the peripherals of the incident. Fleta was a passive eyewitness; as such, he was able to observe things that the former might have overlooked. Moreover, the Court has held that "[t]otal recall or perfect symmetry is not required as long as witnesses concur on material points."[11]

It must be emphasized that the above-mentioned testimonial disparity does not negate the fact that appellant was positively identified by both witnesses as the malefactor who had announced the holdup and exchanged gunshots with the police officer. There is no contrariety with regard to this vital fact. Both witnesses consistently, cohesively and certainly identified appellant as the culprit. Merene testified thus:

> Assistant Provincial Prosecutor Salamillas:
>
> Q
>
> SPO1 Merene[,] on February 18, 1995 at about seven o'clock to seven twenty do you [still] recall where you were?
>
> A
>
> Yes sir.
>
> Q
>
> Where were you then?
>
> A
>
> I was abroad a bus JAC Liner Bus going to Lucena City from Manila.
>
> Q
>
> At that time were there other passengers in that JAC Liner bus?
>
> A
>
> Yes sir.
>
> Q
>
> How many of them if you know?
>
> A
>
> More or less fifteen passengers.
>
> Q
>
> When the bus that you were then boarding was at the vicinity of Sariaya, Quezon can you still recall if some unusual incident occurred during that time?
>
> A
>
> Yes sir, there was.
>
> Q

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What was that unusual incident that took place when the bus reached Sto. Cristo, Sariaya, Quezon?

A

Two passengers alighted before reaching the Lagnas Bridge. Four men stood up inside the bus and the one who was behind the driver announced a hold up.

Q

Where were the other three at that time?

A

One was positioned at the `estribo' running board, and the two were on the road. Four men alighted from the bus.

Q

You stated that two of the passengers went down the bus how did it happen that four men alighted from the bus?

A

When the two passengers alighted from the bus the two followed.

Q

Do you know what these two men who alighted ahead [of] the two passengers did?

A

One of the men poked a gun at the driver the other one poke[d] a knife [at] the conductor.

COURT:

Q

Where was the conductor at that time?

A

On the road.

Assistant Provincial Prosecutor Salamillas:

Q

Do you know why the conductor alighted from the bus?

Atty. Jusi:

Incompetent.

COURT:

Sustained.

Assistant Provincial Prosecutor Salamillas:

Q

Where was the conductor at that time when the hold up was announced?

A

He was already on the ground near the door.

Q

Why was he [on] the ground near the door?

Atty. Jusi:

Incompetent.

COURT:

Sustained.

Q

What did you do Mr. Witness when you heard that there was an announcement of hold up?

A

As I was about to draw my .38 caliber firearm one of the hold[-]uppers who was poking his gun at the driver saw me and he suddenly poked his gun at me and immediately fired a shot.

COURT:

Q

How far were you from that holdupper who poked his gun at you?

A

One seat away.

Q

You were seated at the driver's side?

A

Yes your Honor.

Assistant Provincial Prosecutor Salamillas:

Q

How many times were you fired upon by the holdupper?

A

Two times, sir.

Q

Were you hit by the second shot?

A

No sir.

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Q

What did you do after you felt that you were hit?

A

I drew my .38 caliber gun and immediately fired at the holdupper.

Q

What happened to the holdupper who fired at you?

A

I think I hit the holdupper, after that he jumped out of the bus.

COURT:

At the time that you fired at the holdupper two of the robbers were already on the ground?

A

Yes your Honor.

x x x x x x x x x

Q

And when the holdupper jumped out of the bus where was the fourth holdupper?

A

He was running away.

Q

What about the other passengers at the bus[,] do you know what happened to them?

A

They remained on their seats."[12]

x x x x x x x x x

Q

If one or two of those persons [are] present in Court now will you be able to point [to] them?

A

Yes sir.

Q

Please point to him[.]

A

Witness pointing to accused Eugenio Marquez.

Q

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What about the other person[,] can you point to him?

A

Accused pointing to accused Jose Magtibay.

Q

How about the two other holduppers[,] are [they] present in Court?

A

They are not here.

Q

If you will see them again [will] you recognize them?

A

Yes sir.

Q

Can you still recall what was the participation of the accused Eugenio Marquez?

A

He was the one who poked a gun at the driver and the one who shot me."[13]

Fleta, the other witness, narrated the holdup incident in this manner:

PROS. R. SALAMILLAS

"Q

Where were you on February 17, 1995 at about 7:00 to 7:15 in the evening?

A

I was on board the passenger bus JAC Liner Bus, sir.

x x x x x x x x x

Q

x x x [W]here did you come from at that time?

A

From San Pablo City, sir.

Q

In what particular place in the bus were you seated at that time?

A

At the 3[rd] seat, right side of the conductor['] side.

x x x x x x x x x

COURT

x x x x x x x x x

Q

[Was] there anything unusual that happened while the bus was negotiating the distance from San Pablo to Lucena City?

A

Yes, your Honor

.Q

What was that unusual incident?

A

There was a hold-up that happened, your Honor.

x x x x x x x x x

PROS. SALAMILLAS

Q

Will you please tell the Honorable Court how that hold-up took place?

A

At the junction near Mazapan, two passengers alighted from the bus then four (4) persons boarded the bus taking their seats at the different parts of the bus.

x x x x x x x x x

PROS. SALAMILLAS

Q

What happened immediately before the hold-up?

A

Before the holdup one [of] the holduppers said, "Dito na lang pala kami," sir.

x x x x x x x x x

Q

Did the driver stop the bus?

A

Yes, your Honor. One of the holduppers announced it was a hold up and he raised the revolver he was holding."[14]

x x x x x x x x x

Q

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After the announcement of the hold-up, what happened?

A

There was an exchange of gunfire, sir.

x x x x x x x x x

Q

x x x [W]here did the exchange of gunfire come from?

A

One coming from the person seated behind the driver's seat and the other one from the man beside the conductor who announced the hold-up sir.

x x x x x x x x x

Q

What about the person who announced the hold-up, what happened to him?

A

They jumped out of the bus and they [fled], sir.

x x x x x x x x x

Q

You said there were four men who held up this bus, if ever you will [see] them again will you be able to identify them?

A

I can recognize the one holding the revolver, sir.

Q

If that man is in court now will you be able to identify him?

A

Yes, sir.

Q

Will you please point to him.

A

That man, sir. (Witness pointing to a person who identified himself as Eugenio Marquez)[15]

x x x x x x x x x

ATTY. JUSI:

"Q

You claimed that the alleged robber who sat across the place where you were [was] the one who announced the

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holdup?

A

Yes, sir.

Q

And after the announcement of the holdup it [was] also the person who announced the hold-up who raised his gun?

A

Yes, sir.

Q

And after the announcement of said hold up there was an exchange of fire?

A

Yes, sir.

Q

And you heard according to you four firing shots?

A

Yes, sir.

Q

And immediately after hearing the first firing shot you ducked at your seat and only after you stood up you found out that the conductor was lying face down and the person who identified himself as a policeman ordered the driver to bring him to the hospital, is that correct?

A

Yes, sir.

Q

You claimed during your direct testimony that the policeman who identified himself as such was seated at the back of the driver's seat?

A

Yes, sir.

Q

By your answer, do I get from you that the alleged holdupper was at the back of the policeman considering that according to you he was seated at the 3[rd] seat?

A

No, sir. When he announced the hold up he was already there at the side of the driver.

Q

It is not correct to say that he was [on] the 3[rd] seat when he announced the holdup?

A

I did not say that he was [on] the third seat, sir.

COURT:

Q

The court would just like to find out if that man who was seated on the third seat behind the driver is the person who also said `dito na lang po pala kami[?]

A

Yes, Your Honor, After that man said that he moved towards x x x the driver.

ATTY. JUSI:

Q

And so he was on the right side of the driver when the shooting took place?

A

He was not on the right side, he was on the side of the driver and conductor when the shooting took place, sir.

Q

When the alleged holdupper said that `dito na lang po pala kami' did this allege holdupper immediately [stand] up and [go] to the exit door of the bus?

A

No, sir.

ATTY. JUSI:

Q

Before the two holduppers allegedly alighted from the bus, did you notice whether the bus conductor also alighted?

A

No, sir.

Q

You mean he stood still near the driver[`] seat and [let] the two companions of the holdupper to go down?

A

Yes, sir.

Q

Before the exchange of fire that you claimed that you notice[d] did you see what kind of firearm the policeman was holding?

A

Revolver also, sir.

Q

And you cannot determine from whom or x x x how many shots were made by the policeman or the holdupper, only four shots were heard by you?

A

Yes, sir.

ATTY. JUSI:

Q

You claimed that it was only on February 17, 1995 at 7:00 o'clock in the evening more or less when you first saw the person whom you just identified?

A

Yes, sir.

Q

And the second time that you saw him according to you was x x x today, is that correct?

A

Yes, sir.

Q

Do you have [such] photographic memory to remember the face of a person after a lapse of one year?

A

I could remember, because that was a hold up, sir.

Q

How about the other companion of the person whom you had just identified, if you could see them again, could you recognize them?

A

What I can recognize only is the one who drew the gun and announced the holdup, aside from that I could not recognize the three others, sir."[16]

The quoted testimonies of Merene and Fleta indubitably establish that on February 17, 1995, between 7:00 and 7:20 p.m., a JAC Liner bus going to Lucena City was held up; and that appellant was identified as the culprit who had announced the holdup and engaged Merene in a gunfight. The proximity of these witnesses to appellant, in addition to the fact that there was no showing of ill will or motive on their part, give credence to their testimonies.

The Court regards as too incredulous appellant's version of the holdup incident: that he was a mere passenger who -- caught, hit and wounded in the crossfire -- jumped off the bus to save himself. First, the JAC Liner bus was air-conditioned, and so its windows were closed. Thus, the passengers would not have been able to immediately open and jump from those windows. Second, because the gunfight happened in front, appellant could not have jumped out of the bus from its door, which was located near that area. Lastly, given his gunshot wounds, the flight

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of appellant from the scene of the crime casts doubts on his protestations of innocence; more important, he was positively identified as one of the culprits.

We agree with the court a quo's assessment of the credibility of the witnesses, specifically with regard to the identification of appellant. In this case, we adhere to the legal truism that such assessment is accorded great weight and respect, for the trial court had the opportunity to observe the witnesses' demeanor and deportment as they testified before it.[17] Likewise, we hold that appellant's denial cannot prevail over the positive identification by credible witnesses.[18]

Second Issue: Crime and Punishment

Appellant was charged with, and eventually convicted of, frustrated robbery with homicide and frustrated homicide, as well as violation of PD 1866 (illegal possession of firearms).

In robbery with homicide, it is imperative that the prosecution prove a direct relation between the robbery and the killing. It must convincingly show that robbery was the original criminal design of the culprit, and that homicide was perpetrated with a view to the consummation of the robbery, by reason or on occasion thereof.[19]

That appellant intended to rob the passengers of the JAC Liner bus is evident. The robbery was foiled, however, when SPO1 Rizaldy Merene decided to fight back. Were it not for the presence and the bravery of this police officer, appellant and his cohorts would have successfully consummated their original plan.

In the gunfight that ensued between appellant and Merene, bus conductor Joselito Halum was killed. Clearly, his death occurred by reason or as an incident of the robbery. Even if it was merely incidental (he was caught in the crossfire), still, frustrated robbery with homicide was committed.[20] With regard to the charge of frustrated homicide, appellant, in shooting Merene almost pointblank, had performed all the acts necessary to kill the latter, who survived because of timely medical intervention. Thus, appellant's conviction for frustrated robbery with homicide and frustrated homicide must be sustained.

On the other hand, we agree with the Office of the Solicitor General that the trial court's conviction of appellant for violation of PD 1866 should be reversed; he should be acquitted. In crimes involving illegal possession of firearm, the prosecution has the burden of proving the following: (1) the existence of the subject firearm and (2) the fact that the accused who owns it does not have a license or permit to carry it.[21]

In the present case, it must be emphasized that the subject gun was not found in the possession of appellant; rather, it was discovered at the back of the house of Mauricio Ilao, from whom the former had sought solace after the holdup incident. While the prosecution, considering the circumstances, assumes that the gun was brought there by appellant, such conjecture does not satisfy the elements of the crime; it is clearly not enough to prove beyond reasonable doubt that he was guilty of illegal possession of firearm.

Furthermore, in People v. Molina,[22] this Court has ruled that the use of an unlicensed firearm merely aggravates a killing and may no longer be the source of a separate conviction for the crime of illegal possession of a deadly weapon. This doctrine was reiterated in People v. Feloteo[23] and People v. Narvasa.[24] In People v. Macoy[25] it was held that, being favorable to the accused, the same may be invoked even if the illegal possession had been committed prior to the effectivity of RA 8294 on July 6, 1997.[26]

In view, however, of the failure of the prosecution to prove illegal possession on the part of appellant, we cannot even apply the Molina doctrine to aggravate the penalty.

WHEREFORE, the appeal is PARTIALLY GRANTED. The Decision of the Regional Trial Court in Criminal Case No. 95-557 is REVERSED and SET ASIDE, and Appellant Eugenio Briones y Marquez is hereby

ACQUITTED of violation of PD 1866. However, his conviction for frustrated robbery with homicide and frustrated homicide, together with the penalty imposed by the trial court in Criminal Case No. 95-555, is AFFIRMED.
SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 27-37; penned by Judge Guillermo R. Andaya.

[2] Signed by Provincial Prosecutor Dante H. Diamante; rollo, p. 9.

[3] Rollo, p. 2.

[4] Ibid., p. 2. Also signed by Provincial Prosecutor Diamante.

[5] Appellant's arraignment in Criminal Case No. 95-557 was held on December 11, 1995; and in Criminal Case No. 95-555, on December 13, 1995.

[6] RTC Decision, pp. 10-11; rollo, pp. 36-37.

[7] Rollo, pp. 93-96. Appellee's Brief was signed by Assistant Solicitor General Carlos N. Ortega and Solicitor Luciano Emmanuel L. Joson Jr.

[8] Rollo, pp. 56-57. Appellant's Brief was signed by Atty. Carmelito A. Montano of C.A. Montano Law Office.

[9] This case was deemed submitted for resolution on December 26, 2000, upon receipt by this Court of Appellee's Brief. Appellant's Brief was filed on March 17, 2000. The filing of a Reply Brief was deemed waived, as none was submitted within the reglementary period.

[10] Appellant's Brief, pp. 1-2; rollo, pp. 53-54. All in upper case in the original.

[11] People v. Pareja, 265 SCRA 429, December 9, 1996; citing People v. Cruza, 237 SCRA 410, October 7, 1994, per Cruz, J.

[12] TSN, February 9, 1996, pp. 3-6.

[13] TSN, February 9, 1996, p. 10.

[14] Direct Examination of Manuel Fleta, TSN, September 9, 1996, pp. 4-7.

[15] Ibid., pp. 7-13.

[16] Cross-examination of Manuel Fleta, TSN September 9, 1996, pp. 17-23.

[17] People v. Mana-ay et al., November 20, 2000; People v. Merino, 321 SCRA 199, December 17, 1999; People v. Patalinghug, 318 SCRA 116, November 16, 1999; People v. Tabones, 304 SCRA 787, March 17, 1999; People v. Batidor, 303 SCRA 335, February 18, 1999.

[18] People v. Magbanua, 319 SCRA 719, December 3, 1999; People v. Larena, 309 SCRA 305, June 29, 1999; People v. Hillado, 307 SCRA 535, May 24, 1999; People v. Lagarteja, 291 SCRA 142, June 22, 1998; People v. Caisip, 290 SCRA 451, May 21, 1998.

[19] People v. Leonor, 305 SCRA 285, March 25, 1999; People v. Nang, 289 SCRA 16, April 15, 1998; People v. Sanchez, 298 SCRA 48, October 14, 1998; People v. Mendoza, 284 SCRA 705, January 23, 1998.

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[20] People v. Pecato, 151 SCRA 14, June 18, 1987

[21] People v. Lazaro, 317 SCRA 435, October 26, 1999; People v. Bansil, 304 SCRA 384, March 10, 1999; People v. Molina, 292 SCRA 742, July 22, 1998; People v. dela Rosa, 284 SCRA 158, January 16, 1998.

[22] 292 SCRA 742, July 22, 1998.

[23] 295 SCRA 607, September 17, 1998.

[24] 298 SCRA 637, November 16, 1998.

[25] GR No. 126253, August 16, 2000.

[26] For a discussion of this principle, see Panganiban, Transparency, Unanimity & Diversity, 2000 ed., pp. 260-261.

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