

## SECOND DIVISION

[ G.R. No. 122840, May 31, 2000 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FRANCISCO L. DOINOG AND SAMUEL L. CORTEZ, ACCUSED.**

**FRANCISCO L. DOINOG, ACCUSED-APPELLANT.**

### D E C I S I O N

**MENDOZA, J.:**

This case is here on appeal from the decision<sup>[1]</sup> of the Regional Trial Court, Branch 147, Makati, finding accused-appellant Francisco L. Doinog and his co-accused Samuel L. Cortez guilty of violation of P.D. No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974) and sentencing them to suffer the penalty of *reclusion perpetua* and ordering them to pay the heirs of the victim, SPO2 Ricardo Bautista, the amount of P50,000.00, plus costs.

The information for Highway Robbery, filed on October 4, 1993 against both accused, reads:

The undersigned 4th Assistant Prosecutor accuses FRANCISCO DOINOG y LADRERO and SAMUEL CORTEZ y LOPEZ of the crime of Violation of P.D. 532 (Highway Robbery), committed as follows:

That on or about the 19th day of September, 1993, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Nene Lavadia, alias Dodo, alias Randy and John Doe whose true identities and present whereabouts are still unknown and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously take, divest and carry away cash money amounting to P1,000.00 more or less from Leonora S. Bañaga a bus conductress and cash money and valuables from passengers namely, Ismael Pontillas y Ladrero, Susan Pineda y Bautista and Jaime Doria y Molina in an undetermined amount, while aboard a passenger bus which was travelling along Magallanes, Bgy. Bangkal, Makati, Metro Manila, which is a Philippine Highway as defined by P.D. 532, to the damage and prejudice of said Leonora S. Bañaga and the aforementioned passengers in an undetermined amount; that on the occasion of the said robbery and in order to insure the commission of the said offense, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, with deliberate intent to kill and without justifiable cause, did then and there wilfully, unlawfully and feloniously shoot and stab one SPO2 Ricardo Bautista, thereby inflicting upon him

gunshot and stab wounds on the vital parts of his body which caused his death; and that as a further consequence thereof, physical injuries were inflicted upon the passengers namely Ismael Pontillas y Ladrero, Susan Pineda y Bautista and Jaime Doria y Molina.

CONTRARY TO LAW.<sup>[2]</sup>

Another information for illegal possession of firearms in violation of P.D. No. 1866 was filed on the same day against accused-appellant, Francisco L. Doinog, alleging -

The undersigned 4th Assistant Prosecutor accuses FRANCISCO DOINOG y LADRERO of the crime of Illegal Possession of Firearm and Ammunitions (P.D. No. 1866) committed as follows:

That on or about the 19th day of September, 1993, in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously have in his possession, direct custody and control and carry outside of his residence a cal. 38 paltik with Serial No. 282550 with four (4) live bullets, which is in violation of the above-cited law.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment, both accused pleaded "not guilty" to the charges against them. <sup>[4]</sup> After arraignment, accused Samuel Cortez escaped from the Makati municipal jail and, to this date, has remained at large. The trial proceeded as to accused-appellant alone.

The facts are as follows:

At around 1:30 in the afternoon of September 19, 1993, an air-conditioned bus of the Prince Transport was held-up as it reached the Magallanes fly-over in Bangkal, Makati, along Epifanio de los Santos Avenue. Five (5) armed men stood up from their seats in different parts of the bus and announced the hold-up. One of the men seated beside the driver pulled out a fan knife and poked it at the latter. Another robber took about P1,000.00 from the bus conductor while the others divested the passengers of their cash and valuables. A commotion ensued when one of the robbers fired a gun. When the driver stopped the bus, the robbers and passengers alighted, leaving only the bus driver, the bus conductor and an injured passenger, SPO2 Ricardo Bautista. SPO2 Bautista was later taken to the Villamor Air Base Hospital where he was pronounced dead on arrival. The autopsy report (Exh. E)<sup>[5]</sup> showed that he suffered gunshot and stab wounds which led to his death.

Accused-appellant apparently was also aboard the bus and was hit during the gun fire. He was taken to the Villamor Air Base Hospital for treatment of a gunshot wound on the left thigh. While he was being given first aid treatment at hospital, Sgt. Rogelio Bibat confiscated a .38 caliber firearm allegedly lying on a bed beside accused-appellant's. Accused-appellant was transferred first to the Philippine General Hospital and then to the Ospital ng Makati and, afterward, placed under arrest and detained in the Makati Municipal Jail.

On May 31, 1995, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court, finding accused Francisco Doinog and Samuel Cortez guilty beyond reasonable doubt of the crime charged in the "Information" in Criminal Case No. 93-8496, hereby sentences them to suffer reclusion perpetua, and to indemnify the heirs of SPO2 Ricardo Bautista of the sum of P50,000.00. With costs.

In Criminal Case No. 93-8497, the Court hereby acquits accused Francisco Doinog for insufficiency of evidence.<sup>[6]</sup>

Hence, this appeal. Accused-appellant assigns the following errors:

- I. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE DEFENDANT-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 93-8496 FOR INSUFFICIENCY OF EVIDENCE ON THE PART OF THE PROSECUTION.
- II. THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE EVIDENCE PRESENTED BY THE DEFENSE WHICH INCLUDES THE NEGATIVE FINDINGS OF NBI FORENSIC CHEMIST MARY ANN ARANAS ON THE PARAFFIN TEST CONDUCTED ON BOTH HANDS OF THE DEFENDANT-APPELLANT.
- III. THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE DEFENDANT-APPELLANT OF THE CRIME CHARGED IN CRIMINAL CASE NO. 93-8496 DUE TO REASONABLE DOUBT.

Accused-appellant contends that the prosecution evidence consists mainly of testimonies of unreliable witnesses; that the evidence in fact shows that he was the a victim of trumped-up charges; and that the trial court failed to give due consideration to the report of the National Bureau of Investigation (NBI) that when he was tested for powder (nitrate) burns he was found negative.<sup>[7]</sup>

The Office of the Solicitor General (OSG), on the other hand, relies on the rule that the trial court's determination of the credibility of witnesses could no longer be disturbed on appeal. The OSG claims that the inconsistencies in the testimonies of the prosecution's witnesses are on minor details and do not affect their reliability.<sup>[8]</sup>

This Court generally accords respect to the factual findings of the trial court judge, considering that the latter has the opportunity to directly observe the witnesses and determine by their demeanor on the stand the probative value of their testimonies.

<sup>[9]</sup> There are exceptions to this rule, however, such as, where the record shows that facts and circumstances of weight and influence have been overlooked, misunderstood or misapplied by the trial court which, if considered, would have affected the result of the case, or when such findings are arbitrary.<sup>[10]</sup>

This is such a case. Here, the trial court based its finding of guilt primarily on the testimony of the supposed eyewitness, Jaime Doria, who testified thus:[11]

Q On September 19, 1993, at about 1:00 o'clock in the afternoon, do you recall where were you?

A Yes, sir.

Q Where were you at that time?

A I was aboard a bus.

Q Can you still recall what bus you were riding in at that time?

A Prince Transport.

Q And you were then board for what direction?

A I am proceeding to Bicutan.

Q While as you said you were then on board the said bus, do you recall of any unusual incident that took place?

A Yes, sir.

Q What was that incident?

A There was a hold-up that took place.

Q You said there was a hold-up that took place do you know who that hold-upper was at that time?

A I could not recognize if he is present in Court.

Q Will you please look around inside the courtroom and pinpoint to the hold-upper as you said you saw on that date September 19, 1993?

A Yes, sir. He is inside the courtroom.

Q Please do pinpoint to him?

A Yes, Sir. (Witness pointing to a person who when asked his name answered by the name of Francisco D[o]inog.)

Q Mr. Witness, at that time when the hold-up as you said took place, in what particular place at the bus you were then situated?

A At the middle, sir.

Q What about the accused when you first notice him, where was he at that time?

A Near the driver.

Q What was he doing at that time, if any?

A When we were proceeding to Magallanes, he pulled out a fan knife.

Q You said "siya", to whom are you referring to?

A That hold-upper, sir.

Q And when the accused pulled out a fan knife what transpired next?

A I heard gunshots, sir.

Q Were you able to know from where the gunshots came from?

A I could not recall. But what I heard is that somebody pulled out a gun. During that time there was already a commotion.

Q Do you know who is that somebody pulled out a gun?

ATTY. TIRAD:

Misleading, your Honor. The witness testified that the person pulled out a fan knife ...

FISCAL:

I will reform the question. Do you know who is this person

as you said who pulled out a gun?

A What I could recall is that somebody announced a hold-up.

Q In relation to the place where you said you were then s[eat]ed, where was the man who as you said drew a gun?

A At my right side, Sir.

Q What about the three other companions, where were they s[eat]ed at that time?

A Somebody poked at the driver.

Q And who was that somebody who poked at the driver?

A His companion, sir.

Q While the same person the one who poked a knife against the driver, where was then D[o]inog if you can still recall at that time?

A He was near the door of the bus.

Q What was he doing at that time?

A He got the watches and other valuable things of the passengers.

Q And what happened to you, if any?

A My watch and my wallet were taken from me.

Q What kind of watch is that?

A Seiko.

Q What about the money?

A P200.00, sir.

Q As you said they were divesting the passengers of their properties, what happened next, if any?

A When we learned of a hold-up, all of us alighted from the bus.

Q You said you heard gunshots?

A Yes, Sir.

Q How many gunshots?

A Two, sir.

Q Were you able to find out what happened after the gunshots were fired?

A I noticed that someone died, sir.

Q And did you come to know who died?

A A policeman, sir.

Q What was the name of the policeman, if you can still recall?

A Ricardo Bautista. I read from the newspaper that he is Ricardo Bautista.

Q And you said after the incident, you and the other passengers alighted from the bus?

A Yes, sir.

Q What did you do after that?

A I rode another vehicle and proceeded to Bicutan.

Q Do you recall having investigated by the police officers in connection with this case?

ATTY. TIRAD:

No basis, your Honor. The witness never testified that he has gone to . . .

FISCAL:

I will reform the question. After you heard gunshots I withdraw that. After you have learned that certain