

## SECOND DIVISION

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

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

### D E C I S I O N

**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.<sup>[1]</sup> 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.<sup>[2]</sup>

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.<sup>[3]</sup>

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 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:

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<sup>[4]</sup> 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

Q: Please tell us what is your basis in saying, considering that there were