

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SONNY TE AND FAUSTO BUALAN, JR., ACCUSED, FAUSTO BUALAN, JR., ACCUSED-APPELLANT.

Ponente: CAMELLO, J.

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CAMELLO, J.:

This is an appeal from the Decision promulgated on December 7, 2010[1] of the Regional Trial Court, Branch 8, Malaybalay City in Criminal Case No. 14379-04 finding appellants Sonny Te and Fausto Bualan, Jr. guilty beyond reasonable doubt of Robbery, under Article 294 of the Revised Penal Code, as amended. The Information reads:[2]

That on or about July 1, 2004 at around 6:30 in the evening at Purok 5, Kiocab, Laguitas, City of Malaybalay, Province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring & confederating, did then and there willfully, unlawfully, criminally, and with violence and intimidation and with the use of a gun, with intent to gain, take, steal and carry away one (1) unit NOKIA 3315 cell phone color gray with charger, ATM card, Malong, Nurse uniform, flash light and cash amounting to Sixty Pesos (P60.00) all valued at Six Thousand Pesos (P6,000.00) belonging to SARAH T. PAES, to the damage and prejudice of the said complainant-victim.

CONTRARY TO and in violation of Article 294 (5) of the Revised Penal Code.

Upon arraignment, both accused pleaded not guilty.[3]

The facts of the case as summarized in the People's brief:[4]

At around half past six in the evening of July 1, 2004, Sara Paes was with her two daughters, Melchy and Jasmin, having dinner at their home in Purok 6, Kiucab, Laguitas, Malaybalay City. After dinner, Melchy went to the sala to check their VCD player. Suddenly, appellant and his co-accused, Sonny Te, barged into their house and pointed a gun at Melchy. Jasmin, who was then inside her room, was also threatened with a gun.

Upon hearing her daughters cry, Sara turned around and saw appellant pointing a gun at her daughter. Appellant told Sara that they better not make any noise or they will kill them. Consequently, Sara pleaded for their lives and told appellant that they could take anything inside their house in return for their safety. As such, Sonny Te immediately took Sara's Nokia 3315 cell phone worth Three Thousand Seven Hundred Fifty Pesos (P3,750.00) while appellant took her money.

Afterwards, appellant and his co-accused let Sara and her daughters enter their bedroom and forced them to lie face down on the floor. While they were inside the bedroom, appellant and his co-accused ransacked the house and took Sara's personal belongings such as her ATM card, malong, uniform, flashlight and cash amounting to Six Thousand Pesos (P6,000.00). Appellant also demanded Sara to open their cabinet but found nothing of value inside it.

Appellant then told Sara that they will be waiting for her husband and threatened the latter that her husband gives them something of value or they will kill him. Fortunately, appellant and his co-accused did not make

good their threat and left even before Sara's husband arrived.

Upon arrival of her husband, Sara told him what just happened and they immediately reported the incident to Barangay Kagawad Restituto Bayron. After talking to the Barangay Kagawad, they went to the police station to report the robbery. At this, the police came to their house to investigate, but unfortunately, the police were not able to apprehend appellant and his co-accused.

The following day, appellant and his co-accused were arrested by the police in Aglayan, Malaybalay City as they were suspected of stealing another cellphone owned by a certain Atienza. Consequently, they were brought to the CID, Malaybalay Police Station.

A Civilian Volunteer Organization (CVO) from Aglayan, Malaybalay City then told Sara that two (2) persons were arrested for stealing a cellphone in their place and that the suspects were brought to the police station. Upon hearing the news, Sara immediately went to the police station in Malaybalay City. In the police station, Sara confirmed that the arrested suspects were the same persons who robbed them the previous night.

After trial, the court a quo rendered a Decision, the dispositive portion reads:

WHEREFORE, the court finds the accused Sonny Te and Fausto Bualan, Jr. guilty beyond reasonable doubt of the crime of Robbery and imposes upon each of them the penalty of prision coreccional in its maximum period of 6 years to prision mayor medium period of 8 years; and to indemnify the victim with the sum of fifty thousand pesos (P50,000.00) moral damages; fifty thousand pesos (P50,000.00) civil indemnity and to return all the items taken or its value in the sum of Six Thousand Pesos (P6,000.00). The accused shall serve their penalty in the National Penitentiary of Davao Penal Colony.

SO ORDERED.

Hence, this appeal on the sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Accused-appellant contends that the trial court erred in giving credence to the uncorroborated testimony of prosecution witness Sara Paes.

We find nothing on record to distrust the testimony of prosecution witness Sara Paes. Sara Paes freely and readily gave positive, straightforward, and objective accounts of the events surrounding the occasion of the crime and positively identified the accused as the culprits of the crime. We find no evidence to impute any improper motive on Paes when she testified against accused-appellant.

We are one with the trial court in giving full evidentiary weight and credit the testimony of Paes, consistent with the rule that, where the defense fails to prove the witnesses are moved by improper motives, the presumption is that they are not so moved and their testimonies are therefore entitled to full weight and credit.[5]

As to the proper penalty, We agree with the joint manifestation made by the People and appellant that the penalty imposed by the trial court needs modification. We apply the ruling in *Eduarte v People*: [6]

The felony committed by Eduarte was robbery by means of violence against or intimidation of persons which, under Article 294(5) of the Revised Penal Code, is punishable with prision correccional maximum to prision mayor medium (4 years, 2 months and 1 day to 10 years). There being no aggravating or mitigating circumstance, the penalty should be imposed in the medium period, i.e., prision mayor minimum, which has a range of 6 years and 1 day to 8 years. Applying the Indeterminate Sentence Law, Eduarte is entitled to a minimum term to be taken within the penalty next lower in degree to that imposed by the Code, or arresto

mayor maximum to prision correccional medium, which has a range of 4 months and 1 day to 4 years and 2 months. xxx

As to the civil liability of the accused, We deem it proper to modify the award of moral damages to P20,000.00 instead of P50,000.00, and to altogether delete the award of P50,000.00 as civil indemnity for lack of legal basis.

FOR THESE REASONS, the appealed Decision promulgated on December 7, 2010 of the Regional Trial Court, Branch 8, Malaybalay City in Criminal Case No. 14379-04 is AFFIRMED with MODIFICATION. Accused-appellant Fausto Bualan, Jr. is found GUILTY beyond reasonable doubt of the crime of Robbery. Pursuant to the Indeterminate Sentence Law, accused-appellant Fausto is sentenced to suffer an Indeterminate prison sentence of 4 years and 2 months of prision correccional as minimum to 8 years prision mayor as maximum, applying all applicable accessory penalties and to pay the offended party the following: 1) P 6,000.00 as actual damages and 2) P20,000.00 as moral damages, with costs against appellant.

For the guidance of the lower court, the reduction of the penalty, as well as the civil liability in favor of accused-appellant Fausto Bualan should likewise benefit his co-accused Sonny Te, even if the latter had not taken an appeal, in consonance with Rule 122, Section 11 of the Rules of Court.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Record, pp. 161-169; Decision datelined November 30, 2010; Penned by Presiding Judge Pelagio B. Estopia.

[2] Record, p. 2; Information dated July 5, 2004.

[3] Record, pp. 27-28, Order dated April 18, 2005.

[4] Rollo, pp. 57-59. Appellee's brief, pp. 4-6.

[5] *People v. Panganiban*, 241 SCRA 91 [1995].

[6] G.R. No. 176566, April 16, 2009.

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