PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRYAN ROSALES Y YANGSON, MICHAEL MAHUSAY Y AMAREZ, AND GILBERT GARGOLES Y VILLANUEVA, ACCUSED.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal from the decision dated September 24, 2010 of the Regional Trial Court, Branch 170, Malabon City, in Criminal Case No. 31036-MN which found accused-appellant Michael Mahusay y Amarez guilty of robbery.

Michael Mahusay (accused-appellant), Bryan Rosales (Rosales) and Gilbert Gargoles (Gargoles) were charged in an Information[1] which reads:

> "That on or about the 31st day of May 2004, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to gain, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously take, rob and divest from RICARDA CERBETO Y FEDERNALES, One (1) "Dilantar" containing Twelve Thousand Pesos (P12,000.00) and One (1) Nokia 3210 owned and belonging to Ricarda Cerbeto y Federnales, to the damage and prejudice of the same for the total amount of P12,000.00.

During their arraignment, accused-appellant, Rosales and Gargoles pleaded not guilty to the charge. Accused-appellant was granted provisional liberty upon posting of bail.[2]

The prosecution presented private complainant Ricarda Cerbeto as sole witness.[3] Accused-appellant and Gargoles, on the other hand, testified for the defense.[4]

The prosecution's version of the facts, as found by the trial court, is as follows:

> "x x x
>
> On May 31, 2004, at about twelve midnight, Cerbeto was at the Navotas Fish Port to buy fish ("namakyaw") in St. Joseph Consignation I. While walking along the street of Saint Joseph Consignation towards Market I, she passed between two parked vans. No one else was on the street which was well lit by electric posts. Then two men blocked her way. One of them, the taller one and in yellow t-shirt (later identified as Accused Gargoles) grabbed her by the neck while uttering, "Akin na ang pera mo." Accused Rosales, in blue t-shirt, on the other hand, grabbed her "dilantar,"saying, "Ibigay mo na ang pera mo, tanggalin mo na yan" (Sworn Affidavit, Exh. "A"). The third one, Accused Mahusay, acted as look out.
>
> Cerbeto was only about six (6) meters away from Market I where she was going to buy fish and where many people were already buying fish. But no one noticed that she was being held up. She struggled against the three Accused but they had already taken her "dilantar" which contained cash amounting to P12,000.00 intended as payment for the fish she would buy, as well as the Nokia cellphone 3210 that was just mortgaged to her for P1,500.00. After successfully taking her "dilantar", all three Accused ran away towards the gate. Only then she was able to shout and only then did people notice the robbery. The three Accused, however, were not arrested

> until after ten (10) minutes have passed after she asked assistance from the Maritime Police who were nearby. Accused was arrested in about 100 meters away from the Maritime Office. At the Maritime Office, Cerbeto identified before Investigator PO2 Alfonso Paguro the three Accused: Mahusay, Rosales and Villanueva (sic) Gargoles.
>
> Cerbeto pointed to Mahusay as the one who served as a lookout ("nagmamasid"). She claimed to have seen Mahusay behind her while her neck was being held by Accused Gargoles and her "dilantar" was also being held by Accused Rosales (TSN, November 8, 2004 Hearing, p. 4). Further, Cerbeto testified that while Accused Gargoles and Rosales were walking, Accused Mahusay was following the two.
>
> In Court, Cerbeto again identified all three Accused and specifically pointed to the tall guy (Accused Gargoles) as the one that held her neck, Accused Rosales as the one that grabbed her "dilantar" and Accused Mahusay as the one that served as the lookout.
>
> x x x"

The arresting officers, Floresto S. Diego and Manny Jake O. Ugot, in their "Pinagsamang Sinumpaang Salaysay"[5] stated that on May 31, 2004 at about 12:15 in the early morning, when they were on duty as Patrol Roving Guards of the Special Operation Group of the Philippine Fisheries Development Authority (PFDA), they noticed three persons running towards the exit gate, passed by the PFDA Compound, then disappeared. Immediately thereafter, they heard from their two-way radio that there was a hold-up in Market I and the suspects were wearing yellow and blue t-shirts. The police officers went around PFDA's premises and somewhere at the "tambakan ng basura" going to Market 3, they noticed two persons going out of the "basurahan" hurriedly getting on board a pedicab (padyak). They immediately approached the two persons who were wearing blue and yellow t-shirts and invited them to their office. Cerbeto positively pointed at the two, later identified as Rosales and Mahusay. Rosales admitted that it was "Kumang", later identified as Gargoles, who held the money. Thus, the police officers searched for Gargoles and found the latter in Market 2. When confronted, Gargoles denied the accusation. They brought accused-appellant, Rosales and Gargoles to PNP Maritime Office for investigation.

Accused-appellant presented his own version of the facts, to wit:

> "On May 31, 2004, accused appellant Michael Mahusay, together with accused Rosales, was tending some fish inside the fish port in Market 1, Navotas. Afterwards, they asked permission to cook outside and thus carried with them some extra fish that they bought. After walking for about ten (10) meters, a security guard stopped them and invited them to the guard of the fish port. Upon their arrival, they saw a woman crying who, upon seeing accused Rosales, pointed immediately at him. Thereafter, he was also implicated in the robbery incident.
>
> Accused Gilbert Gargoles denied that he participated in the said robbery incident, as he was sleeping at that time and date. They were just suddenly picked up by the fish port police. He knew Cerbeto as well as accused Rosales and accused-appellant Mahusay."

On September 24, 2010, the trial court rendered the assailed decision[6] which reads in part:

> "In sum, this Court finds all three Accused: Mahusay, Rosales and Gargoles, guilty beyond reasonable doubt, of the crime of Robbery, as charged in the Information.
>
> Article 294, paragraph 5 provides for the penalty:
>
> Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> xxx

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> The penalty of prision correccional in its maximum period to prision mayor in its medium period, in other cases.
>
> The range of the penalty is from four (4) years, two (2) months and one (1) day to ten (10) years.
>
> In view of the absence of aggravating or mitigating circumstance, the penalty shall be imposed in its medium period of from six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days as maximum.
>
> Applying the indeterminate Sentence law, each of the Accused BRYAN ROSALES y YANGSON, MICHAEL MAHUSAY y AMAREZ and GILBERT GARGOLES y VILLANUEVA is imposed the indeterminate sentence of Four (4) Months and One (1) Day of Arresto Mayor as Minimum to Six (6) Years and One (1) Day of Prision Mayor as Maximum.
>
> Each is jointly and severally liable to pay private complainant the amount of Thirteen Thousand Five Hundred Pesos (P13,500.00) by way of restitution for the belongings taken from the victim.
>
> SO ORDERED."

On November 8, 2010, the trial court ordered the release of Rosales and Gargoles from detention for having served the maximum penalty imposed by the trial court in its decision.[7]

Aggrieved, accused-appellant filed a Notice of Appeal[8]. He assigned the following errors to the trial court:

"I.

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
>
> II.
> ASSUMING ARGUENDO THAT ACCUSED-APPELLANT WAS ONE OF THE PERPETRATORS OF THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT CONSPIRACY EXISTS."[9]

Accused-appellant contends that his identification and implication in the crime charged suffer from infirmity. According to him, Cerbeto, whose neck had been held by one of the robbers, could not have seen him as one of the robbers. Accused-appellant asserts that he was erroneously identified to be the third accused and he was implicated only because he was found to be with Rosales at the time of arrest. As to the second issue, accused-appellant asseverates that he cannot be deemed a co-conspirator by his mere presence at the scene of the crime, without proof of overt act showing concurrence with the criminal design of the other perpetrators.

The contentions of the accused-appellant are unmeritorious.

The crime of robbery is defined under Article 293 of the Revised Penal Code, to wit:

> "Art. 293. Who are guilty of robbery. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person or using force upon anything shall be guilty of robbery.
>
> x x x"

The elements of robbery as defined in Article 293 of the Revised Penal Code are the following: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.[10]

There is concurrence of the foregoing elements in the instant case. The amount of P12,000.00 and the Nokia 3210 cellphone taken by Rosales, Gargoles and accused-appellant, belong to Cerbeto who was on her way to the fish port to buy fish. Rosales, Gargoles and accused-appellant employed violence against or intimidation upon Cerbeto when they unlawfully took said properties. In the absence of special circumstances which would reveal a different intent on the part of Rosales, Gargoles and accused-appellant, intent to gain is admitted in evidence against the latter.[11] Lastly, there was violence and intimidation as Gargoles held Cerbeto by the neck as Rosales grabbed her dilantar containing the money and cellphone while accused-appellant, in the course thereof, acted as a look out. Cerbeto positively testified on these circumstances surrounding the robbery and directly identified Rosales, Gargoles and accused-appellant as the culprits. Her testimony was corroborated by the arresting officers' account of the robbery as stated in their affidavit.

The trial court correctly concluded that the crime of robbery was committed beyond reasonable doubt. The same goes with the identity of the offenders. Cerbeto testified on cross-examination[12] that the place where she was robbed by Rosales, Gargoles and accused-appellant was lighted. Visibility is an important factor in the identification of a criminal offender.[13] With the ample lighting condition, Cerbeto could have easily and unmistakably seen Gargoles in yellow t-shirt who held her by the neck while Rosales who was in blue t-shirt, grabbed her dilantar. Accused-appellant who was also wearing a yellow t-shirt stood and acted as a look out of the group. Cerbeto's recollection of the appearance and the roles played by each of the aggressors is far from being unquestionable. It is said that the most natural reaction of victims of violence is to see the appearance of the perpetrator of the crime and observe the manner in which the crime was being committed.[14]

Specifically, Cerbeto's vivid identification of accused-appellant as the one who posed as the group's look out in the perpetration of the robbery deserves credence. She was able to identify accused-appellant and his participation in the robbery before, during and after the commission of the crime. First, Cerbeto saw accused-appellant following Rosales and Gargoles when they were walking. Then, in the course of the robbery, despite her neck being held up, she was able to turn her head to her back and saw and identified accused-appellant as the look out of the group.[15] Lastly, when she shouted and the people noticed her and her assailants, the accused-appellant ran together with Rosales and Gargoles towards the gate.[16]

The accused-appellant, in his defense, testified[17], admitting that he was with Rosales inside the fish port on May 31, 2004. He also claimed that he merely went with Rosales when the latter was invited to go the fish port guard and there he was implicated in the crime. Moreover, when he was asked during the trial about the accusation against him, accused-appellant merely stated that the same was not true, without offering any satisfactory explanation or without presenting credible witnesses to show his innocence of the crime charged.[18] Indeed, accused-appellant has no concrete evidence to prove his defense and the arguments he raised on this appeal are founded on sheer possibilities and conjectures.

Anent the second issue of the existence of conspiracy among accused-appellant and his group, it was established by the evidence that accused-appellant acted as a look out. His role as such naturally demands that he pose himself behind Cerbeto and the other accused to guard against possible detection of the crime being perpetrated. In fact, even if he would assert inaction in the commission of the robbery, the same cannot exculpate him. In the case of People of the Philippines vs. De Leon,[19] the Supreme Court held:

> "Granting that he was merely present during the robbery, his inaction does not exculpate him. To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof. Appellant offered no evidence that he performed an overt act neither to escape from the company of the robbers nor to prevent the robbery from taking place. His denial, therefore, is of no value. Courts generally view the defenses of denial and alibi

> with disfavor on account of the facility with which an accused can concoct them to suit his defense. As both evidence are negative and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed."

The trial court imposed the appropriate penalty. Under Article 294 (5) of the Revised Penal Code, simple robbery is punishable with prision correccional in its maximum period to prision mayor in its medium period.[20] Applying the Indeterminate Sentence Law[21], there being no aggravating nor mitigating circumstance, the maximum term should be taken from the medium period of the penalty prescribed, which is prision mayor minimum or 6 years and 1 day to 8 years. On the other hand, the minimum term should be taken from the penalty next lower in degree to that prescribed, i.e., arresto mayor maximum to prision correccional medium or 4 months and 1 day to 4 years and 2 months. Thus, the indeterminate penalty imposed by the trial court, i.e., 4 months and 1 day of arresto mayor as minimum to 6 years and 1 day of prision mayor as maximum, is well within the range of penalty prescribed by law. With regard to the civil liability ex delicto, the trial court correctly ordered accused-appellant to pay complainant P13,500.00, the amount robbed from the latter pursuant to Article 105[22] of the Revised Penal Code.

WHEREFORE, the appeal is DENIED. The decision dated September 24, 2010 of the Regional Trial Court, Branch 170, Malabon City finding accused-appellant guilty of robbery beyond reasonable doubt and sentencing him to suffer an indeterminate penalty of 4 months and 1 day of arresto mayor as minimum to 6 years and 1 day of prision mayor as maximum is AFFIRMED.

SO ORDERED.

Lampas Peralta, F., (Chairperson) and Acosta, F.P.; JJ., concur

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[1] Rollo, p. 7

[2] Record, p. 32

[3] The testimonies of arresting security officers, Floresto S. Diego and Manny Jake O. Ugot, were dispensed with on account of the stipulation of the prosecution and defense.

[4] The testimony of accused Rosales was dispensed with in view of the stipulation of the prosecution and defense.

[5] Record, p. 42

[6] Rollo, pp. 27-37

[7] Record, p. 151

[8] Record, p. 153

[9] Rollo, pp. 46-60

[10] Zenaida V. Sazon vs. Sandiganbayan (Fourth Division), G.R. No. 150873, February 10, 2009

[11] See the case of People of the Philippines vs. Reyes, G.R. No. 135682, March 26, 2003

[12] TSN, November 8, 2004, Ricarda Cerbeto, p. 5

[13] People of the Philippines vs. Mendoza and Rejali, G.R. No. 104461, February 23, 1996

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[14] People of the Philippines vs. Mendoza and Rejali, G.R. No. 104461, February 23, 1996

[15] TSN, November 8, 2004, Ricarda Cerbeto, p. 4

[16] TSN, November 8, 2004, Ricarda Cerbeto, p. 6

[17] TSN, March 29, 2005, Michael Mahusay, pp. 2-3

[18] TSN, March 29, 2005, Michael Mahusay, p. 4

[19] G.R. No. 179943, June 26, 2009

[20] Art. 294. Robbery with violence against or intimidation of persons. – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer.

x x x

5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.

x x x

[21] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x

[22] Art. 105. Restitution – How made. - The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

This provision is not applicable in a case in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

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