

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS PEREZ Y FRANCO, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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### CARANDANG, J.:

This instant appeal questions the Decision[1] dated 20 May 2013 of the Angeles City Regional Trial Court Branch 59 convicting the accused-appellant Tomas Perez y Franco (accused) in Criminal Case No. 06-2490 for the crime of robbery.

The accusatory portion of the Information in Criminal Case No. 06-2490 reads:

“That on or about the 31[st] day of August 2006, in the Municipality of Mabalacat, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, TOMAS PEREZ y FRANCO, with intent of gain, and with violence, force and intimidation, did then and there willfully, unlawfully and feloniously rob, steal and take the amount of ONE THOUSAND (P1,000.00) PESOS, Philippine Currency, from Zenaida Aquino Garcia, to the latter's damage and prejudice.

Contrary to law”[2]

When arraigned on 19 September 2006, the accused pleaded not guilty to the above charge, whereupon trial commenced.

During the trial, the prosecution presented the testimony of private complainant Zenaida A. Garcia (private complainant). The prosecution's version is as follows:

“On August 31, 2006 at around 10:30 p.m., Zenaida G. Aquino (Aquino) bought sugar from a store located five (5) meters away from her house. She then had money amounting to more than a thousand pesos (P1,000.00). On her way home, she was not aware that accused Perez, who was drunk, was behind her. Perez brought out a knife, pointed it at Aquino's neck and asked for money. For fear that she might be killed, Aquino gave Perez P1,000.00. Thereafter, Perez inserted his hand inside Aquino's shirt and held and mashed her breast. Aquino pushed Perez away, who thereafter removed his hand from her shirt. Perez hurriedly left after the incident.

Aquino went to her house. Then, she went to the precinct to report the incident. Prior thereto, Aquino had seen Perez for a long time; he only passes by her house.[3]

The parties agreed to dispense with the testimony of PO2 Abigail P. Reyes and stipulated as follows:

1. The supposed testimony of the Arresting Officer as the one before whom the complainant gave her statement.
2. The marking of the Affidavit of Arrest executed by PO2 Abigail P. Reyes as Exhibit C, and the name and signature of the said police officer, as Exhibit C-1.
3. The name of PO2 Abigail P. Reyes appearing on the caption of the Sworn Statement of private complainant Zenaida Aquino Garcia, Exhibit B, is marked as Exhibit B-3.[4]

On the other hand, the defense presented the testimony of the accused. The version of the defense of the incident is as follows:

“On August 31, 2006, Perez was at home at Barangay Tabun, Mabalacat, Pampanga heating water for coffee. With Perez were two (2) barangay officials who were roaming in the vicinity and who happened to drop by his house. Perez knows the barangay officials only by their faces; he does not know their names.

Past 5:00 o'clock in the afternoon of said date, Perez was picked up by a police officer assigned at Mabalacat Police Station named Lagasca. Lagasca formerly resided at Perez's house. Perez asked Lagasca to leave the house because he and his wife were always quarreling. There was also an incident when a delivery truck of Red Horse met an accident and Lagasca stored the bottles of Red Horse beer in Perez's house. Perez asked Lagasca to transfer the Red Horse beer bottles, fearing that he might get involved in the incident. Lagasca moved to Zenaida Garcia's house after Perez asked him to transfer. Lagasca was living at Zenaida Garcia's house when the alleged incident occurred.

Lagasca was accompanied by Zenaida Garcia when he picked up Perez. Zenaida Garcia was complaining that Perez poked her (“Tinutukan ko daw po sya.”) Perez is not related to Zenaida Garcia but he has known her for a long time.”[5]

### Ruling of the RTC

After the trial has ended, the lower court rendered the assailed decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, the court finds accused TOMAS PEREZ y FRANCO GUILTY BEYOND REASONABLE DOUBT of the crime of Robbery embodied in the Information dated September 4, 2006.

There being no aggravating or mitigating circumstance alleged and proved, accused TOMAS PEREZ y FRANCO is hereby sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of prision correccional as the minimum term to six (6) years, one (1) month and eleven (11) days of prision mayor as the maximum term, with credit of his preventive imprisonment, and to pay the costs.

In accordance with the foregoing, accused TOMAS PEREZ y FRANCO is hereby ordered to pay private complainant Zenaida Aquino-Garcia One thousand Pesos (P1,000.00) as compensatory damages.

SO ORDERED.”[6]

In convicting the accused, the lower court ruled that all the elements of simple robbery under 293 and 294 (5) of the Revised Penal Code was proven by the prosecution beyond reasonable doubt.

The lower court held that the positive identification of the accused by the private complainant outweighs the weak defense of denial of the accused. It noted that private complainant was firm and consistent in her testimony that it was Perez whom she saw in the evening of August 31, 2006, and who poked a knife to her neck and demanded money from her. The lower court also emphasized the fact that the private complainant and the accused are both residents of Barangay Tabun, Mabalacat, Pampanga and have known each other for a long time. Thus, even if private complainant saw the face of the accused only for a passing moment at the time of the robbery incident, it was enough for the former to identify the latter. The lower court likewise dismissed the insinuation of the accused that the private complainant had ill motives in the filing of the case against him for being uncorroborated.

Hence, this appeal which assigned the following errors:

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S

DEFENSE.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ROBBERY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[7]

### Our Ruling

We rule for the People. The prosecution has established beyond reasonable doubt a case of robbery against the accused.

Article 293 of the Revised Penal Code defines robbery to be one committed by 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 xxx."

The elements of robbery under Article 293 are as follows:

- 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.[8]

First, it was established that the accused demanded and eventually received from the private complainant the amount of P1,000.00, a personal property, on the night of August 31, 2006.

Second, the accused was able to accomplish his purpose through intimidation by poking a knife to the private complainant's neck. Intimidation is defined in Black's Law Dictionary as "unlawful coercion; extortion; duress; putting in fear.[9] Such fear must arise from the willful conduct of the accused, rather from some mere temperamental timidity of the victim; however, the fear of the victim need not be so great as to result in terror, panic, or hysteria.[10] In robbery with intimidation of persons, the intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined. Such fear of injury to person or property must continue to operate in the mind of the victim at the time of the delivery of the money.[11]

To Our mind, the poking of a deadly weapon by the accused on private complainant's neck, a vital and vulnerable body part, and the fact it was done while the accused was behind the back of the private complainant, thus, depriving the latter a chance to defend herself, is sufficient to bring enough fear and mental distress on the private complainant at the time she gave the money to the accused.

Third, the amount of P1000.00 was unlawfully taken by the accused from the private complainant because it was done through intimidation. Unlawful taking or apoderamiento is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. Taking is considered complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. There is, likewise, no need to prove the exact amount of money taken, as long as there is proof of the unlawful taking.[12]

Lastly, intent to gain, or animus lucrandi, as an element of the crime of robbery, is an internal act, hence, presumed from the unlawful taking of things.[13]

The defense of denial of the accused cannot prevail over the direct, straight, and categorical testimony of the private complainant that she acceded to the demand of the accused of giving money to him because of her fear that she might be killed by the accused when the latter pointed her knife on her neck.

Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. [14] Oft-repeated is the rule that for alibi to offset the evidence of the prosecution demonstrating accused-appellants' guilt, they must establish not only that they were somewhere else when the crime was committed but that it was also physically impossible for them to have been at the scene of the crime at the time it was perpetrated.[15] The defense utterly failed to meet the requisite time and place.

The accused likewise failed to substantiate his allegation of ill-motive on the part of the private complainant that would motivate her to provide false testimony against him. His allegation of frame up by a certain "Police Officer Lagasca" is also unsupported by any evidence. As correctly pointed out by the Office of the Solicitor General, the defense failed to request to subpoena the person of "Police Officer Lagasca" to shed light on the circumstances surrounding the arrest of the accused. The defense of frame-up, not unlike denial, has been invariably viewed by the Supreme Court with disfavor for it can easily be concocted.[16]

The accused further argues that the lower court should not have relied on "self-serving and uncorroborated allegation" of the private complainant since there was no corroborating evidence of the alleged robbery incident perpetrated by the accused.

We do not agree. The lone testimony of the private complainant is sufficient to establish the guilt of the accused beyond reasonable doubt considering that such testimony was found credible and reliable by the trial court. As ruled by the Supreme Court in *People vs. Dela Cruz*[17]:

"No rule exists which requires a testimony to be corroborated to be adjudged credible. Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the lack of corroboration, where such testimony is found positive and credible by the trial court. In such a case, the lone testimony is sufficient to produce a conviction. Although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number. Conviction can still be had on the basis of the credible and positive testimony of a single witness."

In this case, the lower court found the testimony of the private complainant credible. The lower court's assessment of the credibility of witnesses is entitled to great respect because it had the opportunity to observe the witnesses' demeanor and deportment on the witness stand.[18] In fact, the lower court noted the deportment of the private complainant and hailed her manner of testifying as "firm and consistent."

The defense further submits that there is no certainty whether the robber is really the accused because the robber was behind the private complainant when he poked his knife on her neck and demanded money from her. It adds that the lighting condition of the locus criminis was not that bright so she could not have clearly seen the robber's face at that time.

This contention is belied by the private complainant when during her re-direct testimony, she testified that she saw the face of the accused when she gave the money to him. It was also established that during the robbery incident, the locus criminis was a little bit bright. The Supreme Court has previously held that the light from the stars or the moon, an oven, or a wick lamp or gasera can give ample illumination to enable a person to identify; or recognize another.[19] In this case, We find it unnecessary to disturb the finding of the lower court that the illumination on the road was sufficient enough for the private complainant to identify the accused, especially since they are long-time barrio mates.

Lastly, the defense cited a discrepancy in the Affidavit of Arrest (Exhibit “C”) executed by PO2 Abegail Reyes who declared under oath that the accused was arrested on August 29, 2006 instead of August 31, 2006, as was stated in the Information. For the defense, it was highly illogical and against human experience that the arrest came first before the alleged commission of the robbery. This allegedly bolster his theory that the accused was just set up by the private complainant and Police Officer Lagasca.

This argument is unavailing. It must be noted that no less than the accused has confirmed that he was arrested by the police on August 31, 2006. Thus:

“PROS. HABAN

Q

Mr. Witness, you testified that you were arrested on August 31, 2006, is that correct?

A

Yes, sir.

Q

That was around midnight of August 31, 2006, correct?

A

Yes sir.”[20]

In any case, this purported discrepancy in the Affidavit of Arrest does not affect the overwhelming pieces of evidence presented by the prosecution which establish the guilt of the accused.

In sum, the lower court is correct in finding accused guilty beyond reasonable doubt of the crime of robbery.

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The assailed Decision is AFFIRMED.

**SO ORDERED.**

Barza, and Reyes-Carpio, JJ., concur.

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[1] Penned by Judge Ma. Angelica T. Paras-Quiambao. Rollo, at 25-34.

[2] Records, pp. 1-2.

[3] Decision, Rollo, p. 27.

[4] Order dated December 5, 2007.

[5] Decision, Rollo, p. 28.

[6] Rollo, pp. 39-40.

[7] Rollo, p. 15.

[8] Sazon vs. Sandiganbayan, G.R. No. 150873. February 10, 2009.

[9] Black's Law Dictionary, Sixth Edition, p. 821.

[10] Id., p. 822.

[11] Sazon vs. Sandiganbayan, supra, citing Luis B. Reyes, The Revised Penal Code, Book Two, p. 642.

[12] People vs. Hernandez, G.R. No. 139697. June 15, 2004 citing People v. Arellano, 366 SCRA 204 (2001).

[13] Ibid.

[14] People of the Philippines v. Dindo Vallejo, et al., G.R. No. 125784, November 19, 2003.

[15] People vs. Dela Cruz, G.R. No. 123397, 13 October 1998.

[16] People vs. Dulay, G.R. No. 150624. February 24, 2004.

[17] People vs. Dela Cruz, G.R. No. 175929. December 16, 2008.

[18] People v. Antonio, G.R. No. 128149, July 24, 2000.

[19] People vs. Sabalones, G.R. No. 123485. August 31, 1998.

[20] TSN, February 8, 2011, pp. 2-3.

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