

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. SALVADOR GAMAYON, ANGEL ACERA, ALFREDO MAPUTE, ALFREDO ESCALAÑA AND ANDRES SAJOL, ACCUSED.

G.R. No. L-25486. April 28, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Salvador Gamayon, Angel Acera, Alfredo Mapute, Alfredo Escalaña and Andres Sajol were charged with the crime of robbery with less serious physical injuries in an information filed by the City Fiscal with the Court of First Instance of Misamis Oriental.

The crime was allegedly committed as follows:

"That on or about the 12th day of October, 1964, at more or less 9:30 o'clock in the evening, at Gahub Bridge, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, taking advantage of the nighttime, and with the use of violence upon one Mauro Gomez, to wit: by then and there giving him several fist blows on the face and other parts of his body, thereby inflicting upon said Mauro Gomez physical injuries which have required and will require medical attendance for a period of from 7 to 12 days and have prevented and will prevent him from engaging in his customary labor for the same period of time, did then and there wilfully, unlawfully and feloniously take, steal and carry away, with intent of gain and without the consent of the owner thereof, the money, the sum of P7.00, to the damage and prejudice of the said Mauro Gomez in the aforementioned amount.

"Contrary to and in Violation of Article 294 in relation to Article 265 of the Revised Penal Code." (Original Records, p. 49)

After trial, the lower court found the five accused guilty beyond reasonable doubt of the crime of robbery with less serious physical injuries and sentenced each one of them to an indeterminate sentence of three years and one day of prision correccional, as minimum, to six years and one day of prision mayor, as maximum, and solidarily to pay or return to Mauro Gomez the sum of P7.00, and each one to pay one-fifth of the costs.

All the five accused filed the instant appeal. However, before the case could be submitted for decision, accused-appellants Salvador Gamayon, Angel Acera, Alfredo Mapute and Alfredo Escalaña filed a motion to withdraw appeal. In a resolution dated September 20, 1966, we granted the motion to withdraw appeal thereby leaving accused-appellant Andres Sajol as the only appellant prosecuting this appeal.

The appellant assigns the following errors in his brief:

I

"THAT THE LOWER COURT ERRED IN FAILING TO RECOGNIZE THE FAILURE OF THE CITY FISCAL TO CONDUCT THE PRELIMINARY INVESTIGATION AS CONSTITUTING A REVERSIBLE

ERROR AND DEPRIVATION OF THE DUE PROCESS OF LAW.

II

"THAT THE LOWER COURT ERRED IN FAILING TO SEE THE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF THE OFFENSE CHARGED.

III

"THAT THE LOWER COURT ERRED IN CONCLUDING THAT THE GUILT OF THE ACCUSED WAS PROVED BEYOND REASONABLE DOUBT."

The first assignment of error is without merit. The information dated October 15, 1964 (page 2, Original Record) filed by the city fiscal before the Gingoog City Court is not the information contemplated in Section 14, Rule 112 of the Rules of Court. As a matter of fact, the City Fiscal filed another information with the Court of First Instance on January 19, 1965. The questioned information was filed pursuant to Section 87 of Republic Act 296, as amended. The information was for the purpose of initiating proceedings "so that the judge may conduct a preliminary examination to determine whether a warrant of arrest should issue, as provided in sections 1, 2, 4, 5 and 6 of Rule 112 of the Rules of Court, and the preliminary examination may be followed by a preliminary investigation after arrest, as provided in section 10 of the said Rule 112." (Sanidad v. Bermudez, 39 SCRA 1) The city court, after considering the questioned information and examining the prosecution's witnesses issued a warrant of arrest for the appellant. Afterwards, the preliminary investigation proper followed. The record shows that the hearing for the preliminary investigation was set twice with adequate notice to the prospective witnesses for both the prosecution and defense. The first scheduled hearing was postponed in an order dated October 31, 1964 granting a motion for postponement filed by the counsel for the accused. In the same order, the city court also granted the motion for reduction of the amount of bail bond. (Original Record, p. 12). The second scheduled hearing did not push thru as the counsel for the accused filed instead an Urgent Motion to Quash Warrant of Arrest (Original Record, pp. 35-37) and a motion to dismiss the case (Original Record, p. 38). In an Order dated December 1, 1964, the city court denied the motion to dismiss for lack of merit and ordered the records of the case to be forwarded to the court of first instance for trial on the merits, specifically stating therein that there was no hearing on the scheduled preliminary investigation as the accused preferred to submit a motion to dismiss which the court found to be not meritorious considering that there was a prima facie case against the accused.

The record reflects that the preliminary investigation was conducted by the city court pursuant to Section 10, Rule 112 of the Rules of Court. Under the foregoing procedure, Section 4, Rule 112 of the Rules of Court which requires the city fiscal to conduct a preliminary investigation before filing an information is inapplicable. (Sanidad v. Bermudez, supra).

The appellant had all the opportunity to present evidence in his favor during the preliminary investigation proper. Therefore, his allegation that he was deprived of his constitutional right of due process cannot be sustained.

The second and third assignments of error are likewise without merit.

A careful scrutiny of the records of this case leads us to agree with the People's version of the facts. These are:

"It appears that at about 10:00 o'clock in the evening of October 12, 1964, at Gingoog City, Misamis Oriental, Pedro Malta, a tricycle-cab driver reported to the police that he was being harassed and coerced into giving money by some persons at the Gahub bridge, so that Sgt. Eutiquio Bitangcor ordered the Police Night Patrol to proceed to said bridge, while Sgt. Bitangcor rode along on said tricycle for the same direction (pp. 73-74, 108, t.s.n.).

"On the way the Police Night Patrol met the herein complainant, Mauro Gomez who was walking alone

towards the City Hall with torn clothes and bleeding face; he was the victim of robbery of P7.00 committed by herein appellant Andres Sajol and his group (pp. 10-14, 54-56, t.s.n.). Relating how it happened, Mauro Gomez declared that when he arrived at said Gahub bridge, Gingoog City, at about 9:30 o'clock in the evening of October 12, 1964, he saw persons standing in the middle of the bridge; and there the two of them called him asking for money, but because he refused them, he was boxed, hitting him on his left upper brow and his nose, and kicked hitting him on his right side and his right leg (pp. 8-9, t.s.n.). He fell and all his assailants surrounded him, kicking him and one of them took his seven (P7.00) pesos from the right pocket of his shirt, tearing it in the process (pp. 9-11, 12, t.s.n.). After his money was taken, he was abandoned by his assailants and he rose proceeding to the City Hall of Gingoog City; on his way he met the Police Night Patrol who invited him to join them in their jeep to the City Hall which he did (pp. 14-16, t.s.n.).

"Toribio Manguiran in his corroborating testimony declared that while riding on a motorcab along Gahub bridge at about 9:30 o'clock in the evening of October 12, 1964, he saw Loloy (Salvador) Gamayon boxing complainant Mauro Gomez and that Gamayon's companions, among others, was herein appellant Andres Sajol (pp. 57 t.s.n.).

"It appears that the Municipal Health Officer, Ireneo O. Pascual examined in the evening of the date in question complainant Mauro Gomez, and was found to have suffered lacerated wound on the left eye-brow, about 3/4" in length and contusion hematoma with laceration about 3/4" in length on the right side of the nasal bone or nose (pp. 18-19, 48 t.s.n.; Exh. B. p. 3 rec.).

"Continuing the story of Sgt. Bitangcor, it appears that when he arrived at the Gahub bridge on the night in question with Pedro Malta, he saw appellant Sajol and his other companions (Salvador Gamayon, Angel Acera, Alfredo Escalaña and Alfredo Mapute) there and he started questioning, asking Malta who were molesting him and the latter pointing to the five (5) of them when the Police Night Patrol arrived bringing along the injured Mauro Gomez (pp. 74-76 t.s.n.). As Sgt. Bitangcor was talking to Salvador Gamayon, the other four of them including appellant Sajol escaped, prompting him to order the arrest of Gamayon and ordering policeman Santiago Borromeo and Pafiniano Jumo to chase the fleeing assailants (pp. 78-79, 109-111 t.s.n.).

"The incidents involving Pedro Malta and complainant Mauro Gomez on the evening in question were reported in the police blotter (Exh. C, p. 163)." (Brief for the Appellee, pp-2-4).

The accused-appellant was arrested the day following the incident, on October 13, 1964 by virtue of the other accused's revelation that he was one of them. Gamayon and Acera were apprehended a few minutes after the incident. Complainant Mauro Gomez and prosecution witness Toribio Manguiran positively identified the accused-appellant as one of the assailants. Toribio Manguiran saw the incident while passing by Gahub Bridge, the scene of the incident, driving his tricycle. Both witnesses admitted that they did not know the accused-appellant but recognized him by face as one of the assailants. There were two fluorescent light bulbs installed at both ends of the Gahub Bridge which enabled the witnesses to identify the accused-appellant.

We find from the records that the accused-appellant's defense of alibi deserves no consideration. His uncorroborated testimony that at the time of the incident, he was at his neighbor's house "to butcher a pig" cannot be believed considering that he was positively identified as one of the assailants, not only by the prosecution witnesses but also by his own co-accused.

Moreover, we give credence to the narration of the incident by the prosecution witnesses, especially the police officers who are presumed to have performed their duties in a regular manner in the absence of evidence to the contrary.

We note the Solicitor General's recommendation that the issues raised in the appeal involve both questions of law and fact and that the case should have been remanded to the Court of Appeals. As a matter of regular procedure,

this should have been the case. However, considering the lapse of time since the crime was committed, it would serve no useful purpose to incur further delay by remanding the case to the Intermediate Appellate Court. The appellant himself brought the appeal directly to the Supreme Court. Furthermore, it has also been argued that a determination of whether or not the evidence on record is sufficient to sustain a finding of guilt beyond reasonable doubt ceases to be a factual issue but becomes a question of law. And this determination is what brought the accused-appellant directly to this Court. The substance of his second and third assignments of error is the alleged insufficiency of the evidence to convict him.

WHEREFORE, the decision appealed from is hereby affirmed en toto. Costs against the appellant.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

Teehankee (Chairman), J., in the result.

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