

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2 JULIUS PAYOYO Y BALDONADO, ACCUSED-APPELLANT.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is an appeal from the Judgment[1] dated March 18, 2010 rendered by the Regional Trial Court of Manila, Branch 19, in Criminal Case No. 03-214292, the dispositive portion of which reads, as follows:

X X X

"Premised on the foregoing, the Court finds accused JULIUS PAYOYO GUILTY beyond reasonable doubt of the offense of robbery under paragraph 5 Article 294 of the Revised Penal Code and is imposed the indeterminate penalty of four (4) years and two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, to restitute Arvin M. Japlit the Nokia 8890 mobile phone and the six pieces speed loader or to pay the value.

"SO ORDERED."

X X X

THE ANTECEDENTS

Accused SPO2 Julius Payoyo was charged with the crime of Robbery under paragraph 5, Article 294 of the Revised Penal Code through an Information[2] which reads as follows:

X X X

"That on or about August 22, 2002, in the City of Manila, the said accused, conspiring and confederating with others whose true name, real identities and present whereabouts are still unknown and helping one another, by means of force, violence and intimidation to wit: by then and there forcibly grabbing from Arvin M. Japlit One (1) .38 Caliber Revolver Taurus, Nokia 8890 Cellphone worth P10,000.00, \$200.00 or its Peso equivalent amounting to P10,400.00 and Six (6) pieces of speed reloader for a .38 Caliber Relover (sic), did then and there willfully, unlawfully and feloniously, take, rob and carry away the said items in the total amount of P20,400.00, belonging to Arvin M. Japlit, against his will to the damage and prejudice of the said owner in the aforesaid amount of P20,400.00, Philippine Currency.

"CONTRARY TO LAW."

X X X

When arraigned, duly assisted by counsel, accused pleaded "not guilty" to the crime charged against him.[3] During the pre-trial, the prosecution and the defense stipulated that on the evening of August 22, 2002, the accused arrested the private complainant for illegal possession of firearm and that the private complainant was

duly investigated by the police. The defense counsel also admitted the existence of a medical certificate but not the contents thereof.[4]

During the trial, the prosecution presented the testimonies of the following:

Arvin Japlit, the private complainant, a businessman and a barangay tanod, who testified[5] that at about 3 o'clock in the morning of August 22, 2002, he was on patrol in Barangay 206 near Fortuna Street along Magsaysay Boulevard in Manila when the accused arrived with five (5) or six (6) companions on board an owner-type jeepney and scooter. The accused, who was on board the jeepney, was in police uniform while his companions were wearing civilian clothes. The accused asked private complainant if he is a police officer, to which he answered that he is a barangay tanod. The accused asked him why he had a gun tucked to his waist. Private complainant then showed the accused the license to the gun.

Private complainant and the accused grappled for the possession of the firearm, and the accused hit private complainant on his right temple twice but the latter did not know what the accused used in hitting him. When he fell, the accused took his mobile phone, six (6) pieces speed loader, \$200, P10,000.00 cash and the firearm's documents. The first one taken was his wallet, then the speed loader attached to his belt. He felt dizzy after being hit and he called the barangay chairman for help. Some kagawad and tanod responded but the accused and his companions poked their guns at the barangay officials.

Private complainant was made to board the owner-type jeep with the other barangay tanod and was brought to a hospital in Sampaloc but no treatment was extended to him. His brothers arrived and brought him to Jose Reyes Memorial Hospital where he was treated and was consequently issued a medical certificate.

Private complainant and the accused were brought to the Police Station 8 (PS-8) but they were escorted to the General Assignment Section (GAS) of the Manila Police District (MPD) located at United Nations Avenue, Manila. On their way thereto, the accused escaped and was chased by the escorts. Private complainant's firearm was returned to him but the other articles taken by the accused from him were not returned to him.

Private complainant was in possession of the firearm since 1998 and was issued a license to carry the same but the original thereof was taken by the accused and was never returned to him.

Eduardo Aglib, a barangay tanod of Barangay 626, Zone 63, Pureza, Sta. Mesa, Manila, also testified[6] that on August 22, 2002 at 3 o'clock in the morning, he was with Arvin Japlit and other barangay tanod on foot patrol. When they reached Ramon Magsaysay Blvd., they called the attention of a man who had no shirt and whose scooter was not properly parked. Arvin Japlit asked him why his scooter was not properly parked but the man left with his scooter. When they were at Fortuna Street along Magsaysay Blvd., the man aboard the scooter arrived with the accused who was on board an owner-type jeep. The accused, who was in police uniform, alighted from the jeep and confronted Arvin Japlit about the latter's firearm. Before Arvin Japlit could reply, the accused forcibly seized the gun from him together with his wallet and two (2) speed loader. When Arvin Japlit called for the barangay chairman, the accused hit him with the butt of his gun. Arvin Japlit fell to the ground and while on the ground, the accused kicked him. The speed loader and the wallet fell to the ground and the accused picked them up. The accused also took Arvin's cellphone from his waist.

Arvin Japlit's companions could not move because they were held at bay by the companions of the accused. Arvin Japlit and his companions were forced to board the owner-type jeep and they were brought to the Ospital ng Sampaloc where Arvin Japlit was treated.

From there, the group was brought to PS-8 where a complaint was filed. They proceeded to PS-8 to complain but they were directed to go to the General Assignment Section where he gave his statement. While the incident was

being investigated, the accused disappeared.

He declared that he never knew the name of the man with the scooter whom they accosted and who reported the matter to the accused. He denied that Arvin Japlit poked a firearm to the said man and that they merely advised him to park his scooter properly. There was no altercation between the said man and Arvin Japlit.

SPO1 Jayvee Aglipay, an investigator, also told the RTC[7] that on August 22, 2002, he was assigned to the General Assignment Section (GAS) of the Western Police District (WPD). While he was on duty in the early morning of August 22, 2002, he investigated the complaint for robbery against SPO2 Julius Payoyo. The complainant was brought to GAS by the barangay chairman of Barangay 626 and Inspector Reyes of PS-8. SPO2 Payoyo was not around during the investigation because according to Inspector Reyes, the immediate superior of the accused, the latter sought permission to go to the upper floor of the WPD but he never returned. Officer Aglipay identified the Sinumpaang Salaysay of the complainant which he prepared during the investigation.

Preval Anthony Amato,[8] a neuro-surgical resident physician of the Jose Reyes Memorial Medical Center, identified the medical certificate[9] he issued to Arvin Japlit after he examined the latter and found him with a laceration on the right temporal area.

Eduardo D. Reyes, a police officer assigned to the MPD, testified[10] that on August 22, 2002, he was assigned to the Sampaloc Police Station of the MPD where he worked with the accused who was assigned to a Police Community Precinct within the jurisdiction of Police Station 4 (PS-4). On the said date, a brother of the complainant sought his assistance because the complainant was held-up by a police officer. Officer Reyes met with the complainant and the accused, who was in complete uniform, at PS-8 in Sta. Mesa, Manila. After the accused said that he did not know Officer Reyes, the latter introduced himself to the accused as the one inspecting him as a policeman in PS-4. He asked accused to surrender his firearm to him. At first, accused refused to but he did so later on. The accused had a lot of money in his right pocket but he refused to surrender them saying that it was his money. The complainant told him that among the items taken from him by the accused was a licensed gun with the corresponding permit to carry. Officer Reyes was able to retrieve complainant's gun from one of the police officers escorting the accused but whose name he could no longer recall.

With the assistance of the Station Commander of PS-8, Officer Reyes brought the accused to the GAS of the MPD but the accused escaped upon reaching the GAS. When General Bulaong arrived, Officer Reyes handed him the firearm of the accused to prove that the latter was arrested but was able to escape.

Officer Reyes narrated that the brother of complainant, a friend of his, sought for his help by calling him through his cellphone. He also stated that the father of the complainant used to be a Manila Police Officer and they worked together at the MPD. He knew the accused by his name because they belong to the same police station but he did not know accused personally as the latter was on AWOL status and was not always around whenever he conducted his inspection of the PCPs.

The defense presented the testimonies of the following:

SPO2 Julius Payoyo,[11] the accused himself who denied the accusation against him by telling the RTC that between 1:30 AM to 2 o'clock AM of August 23, 2002, he was sleeping at his home in Nagtahan when he was awakened by repeated knocks on his door. When he opened the door, he saw Aquilino Ramos alias Bong who seemed very frightened. The latter reported to him that a fat man wearing short pants and undershirt introduced himself as a police officer to him. That man searched Aquilino Ramos and when he found nothing on him, the man poked a gun on his side. The incident was not reported to PS-4.

Aquilino Ramos asked the accused to accompany him home and in reporting the incident. The accused put on his

police uniform and the duo waited for a ride going to Pureza when Officer Manaois, a police officer also of PS-4, arrived with PO2 Benhur Jingona on board an owner-type jeepney. The accused and Aquilino Ramos rode with Officer Manaois to PS-4. On their way to PS-4, Aquilino Ramos saw Arvin Japlit going inside a 7-11 convenience store at Pureza Street. They trailed Arvin Japlit who headed towards a gasoline station at Fortuna Street. Upon reaching thereat, the accused alighted from the vehicle, approached Arvin Japlit and asked him if he had a firearm. Arvin Japlit introduced himself as a tanod. At this point, the right hand of the accused was on his holster while his left hand was on Arvin Japlit's firearm which was tucked on the right side of the latter's waist. When Arvin Japlit resisted, he slipped, fell down and hit his head in the pavement. As he was slowly getting up, Arvin Japlit removed his belt and threw it with the gun reloader away from the accused and towards the barangay hall. He then called out "Chairman! Chairman!". Somebody picked up the belt and ran away with it.

Arvin Japlit asked that the matter be settled but the accused suggested that he be brought to the police station. The accused noticed that Arvin Japlit was bloodied and pale so he told the latter to first have his wound treated. Arvin Japlit initially refused to go with the accused but nevertheless boarded the jeep of Officer Manaois when he was ordered by the accused. Arvin Japlit's two companions also boarded the said jeep. The accused tucked the complainant's firearm in the left side of his waist.

The complainant was brought to the Ospital ang Sampaloc. The accused left the complainant at the hospital and proceeded to PS-4 with Aquilino Ramos to report that he arrested a person. At PS-4 however, the accused was advised to report the incident to PS-8 which has jurisdiction over the place of the incident. The accused returned to the hospital and while waiting for the complainant to be treated, SPO1 Marasigan of PS-8, a barangay chairman and a kagawad arrived. Officer Marasigan shouted at Aquilino Ramos, "Hindi mo kilala ang kalaban mo! Isasama kita sa pinatay kong pulis!" The accused told Officer Marasigan not to threaten Aquilino Ramos because the latter was the one complaining.

Arvin Japlit, the complainant, went out of the hospital and boarded a van with his brother, Officer Marasigan and the barangay chairman. The accused was told that the complainant was being brought to PS-8. The accused and Aquilino Ramos followed them on board the latter's motorcycle. Upon reaching PS-8, the accused directed Aquilino Ramos to go to PS-4 to file his complaint that a gun was poked at him. At PS-8, Arvin Japlit reported that he was robbed by a "hulidap". At that time, the gun which he took from complainant was still with him. He told the police officers not to believe the complainant's story and that he arrested the latter.

Inspector Reyes of the Blumentritt PCP arrived and wanted the accused to surrender his firearm but the latter refused. His firearm was forcibly taken with the complainant's firearm. He was made to board a van because the complaint against him was supposed to be filed with the GAS, and PS-8 did not want to receive the complaint of Arvin Japlit. Upon arrival at the GAS, the accused sought the permission of Officer Marasigan to relieve himself. While inside the comfort room, the accused fainted. At times, the accused suffers from hypertension especially when he lack sleep. Two officers in civilian clothes approached him and when told by the accused that he was not feeling well and wanted to go home, the officers called a taxicab which the accused boarded and left the GAS for home.

The accused did not deny that at PS-8, Inspector Reyes disarmed him and also took from him the complainant's firearm. He also admitted that the complaint against him was not received by PS-8 because complaints against police officers should be filed with the GAS. The accused did not report the incident to the PS-4 Station Commander, he did not report for work for one week and he did not file for sick leave for one week.

PO2 Benjur Jingona, an Officer of PS-9 of the Manila Police District, testified[12] that in the year 2002, he was detailed at Malacañang. In the morning of August 22, 2002, he was sleeping at his quarters and barracks at the

Presidential Management Staff Building when Officer Ernesto Manaois arrived and woke him up. Officer Manaois requested Officer Jingona to accompany him to the former's asset. On their way, he suggested that they fetch the Accused Officer Payoyo. En route to the house of the accused at Aciete Street in Nagtahan, they spotted the accused and a civilian who flagged them. After the two boarded the jeep, the civilian told them that a man poked a gun at him. When they passed by the 7-11 store, the companion of the accused saw the man who poked a gun at him. They followed the man until they reached the gasoline station, when Officer Manaois stopped the vehicle and the accused alighted. The accused approached the man and introduced himself as a police and asked the man why he had a firearm and if the latter was a police officer. The man, identified as the complainant Arvin Japlit, was arrogant and intoxicated, and said he was a barangay tanod. The accused asked if the complainant had a license. The latter reloaded his gun. The accused grabbed the gun but the complainant resisted. As the two were grappling for the possession of the gun, the complainant fell to the ground and blood oozed from his head. Officer Jingona could not recall that a single centavo fell from the complainant because they were grappling for the gun.

After reloading the gun, the complainant threw it away and shouted "chairman, chairman". As there was already a commotion, Officer Jingona alighted from the vehicle to assist the accused but before he could approach, the accused already gained possession of the gun. He also claimed that there were persons who threw stones at them. Officer Jingona advised the complainant's companions to bring the seemingly unconscious complainant to the hospital. The officers and the complainant's companions helped load the complainant to the jeep so he can be brought to the hospital.

Officer Jingona advised the accused to have the incident blotted at PS-4. The accused and Aquilino Ramos said they were going to PS-4. When the accused returned to the hospital, he told Officer Jingona to have the incident reported at PS-8. He corroborated the testimony of the accused relative to the arrival of Officer Marasigan at the hospital and what transpired thereat.

Officer Jingona did not know that the accused was charged before the People's Law Enforcement Board (PLEB) and he did not testify before the said body because the accused did not ask him to testify. The accused also did not tell him that he was penalized with demotion by the PLEB.

Aquilino Ramos testified[13] that past midnight of August 22, 2002, he was on board his motorcycle on his way to the 7-11 store located at Pureza Street to buy candles because there was a brown out. The complainant and his three companions stopped him. The complainant, who introduced himself as a police officer, frisked him and when nothing was found on him, the former poked a revolver on the right side of his waist and told him "sige umuwi ka na". He left and decided to have the incident reported because the man might repeat the same act and he was frightened. He did not immediately report the incident to the barangay hall or to the police station. Instead, he proceeded to the house of the accused to narrate the incident. He corroborated the testimony of the accused relative to that portion after he and the accused left the latter's house. He narrated that when the accused approached complainant, the accused grabbed the gun and they grappled for it. He declared that the only thing taken by the accused from the complainant was the gun but not the latter's cellphone, the dollars and the money. He presented a document as proof that the incident of grave threat was blotted at PS-4 because the incident happened in Alegria Street corner Aurora Blvd., Sta. Mesa, Manila which is within the jurisdiction of PS-4.

The case for grave threats he filed against the complainant and Officer Marasigan before the Office of the City Prosecutor was dismissed but an information for other light threats was filed against the complainant. A warrant of arrest was issued against the latter when he did not appear at his arraignment.

After the trial, the RTC rendered its assailed Judgment dated March 18, 2010 finding the accused guilty beyond reasonable doubt of the crime of robbery under paragraph 5, Article 294 of the Revised Penal Code. In arriving at

such conclusion, the RTC weighed the credibility of the prosecution's version of the incident as against that presented by the defense, and gave more credence to the prosecution's evidence.

Nevertheless, the RTC found it beyond belief that the accused would have carted away complainant's money amounting to P10,000.00 and US\$200 as it is incredible for complainant to be carrying in his person such large sum of money at an unholy hour of 3 o'clock in the morning.

On April 14, 2010, the RTC gave due course to the Notice of Appeal filed by the accused.

ASSIGNMENT OF ERRORS

Accused, as the appellant before Us, made the following assignment of errors in his brief, to wit:

THE DECISION OF THE TRIAL COURT IS FATALY DEFECTIVE AS IT MISERABLY FAILED TO STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED. THIS CAN BE READILY SEEN FROM THE UTTER FAILURE OF THE DECISION TO:

(A) DISCUSS AND EVALUATE THE EVIDENCE OF THE PARTIES, PARTICULARLY THAT OF THE PROSECUTION;

(B) DETERMINE WHETHER THE EVIDENCE FOR THE PROSECUTION IS ENOUGH TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED AND/OR DECLARE THAT THE PROSECUTION HAS PROVEN THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

Accused-appellant further argued that he was convicted of the crime charged without any factual and legal bases because what the Decision did was focus on peripheral matters relating to the defense of the accused instead of discussing first and foremost the evidence for the prosecution and determine whether it is enough to warrant the conviction of the accused.

But the Solicitor General restated accused-appellant's assignment of error as follows:

I

WHETHER THE APPEALED DECISION COMPLIED WITH THE CONSTITUTIONAL REQUIREMENT OF CLEARLY AND DISTINCTLY STATING THE FACTS AND THE LAW ON WHICH IT IS BASED.

II

WHETHER THE PROSECUTION PROVED APPELLANT'S GUILT BEYOND REASONABLE DOUBT.

Accused-appellant's main contention in his appeal is that the decision of the trial court failed to comply with the constitutional mandate of Section 14, Article VIII of the Constitution that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Quoting in toto the RTC's ruling in its Judgment, accused-appellant points out that the trial court failed to discuss the merits of the evidence of the prosecution and that the dispositive portion of the decision finding the accused-appellant guilty as charged came "out of the blue" with no factual and legal bases at all. He then posits that the RTC's decision was a patent nullity and must be struck down as void.

The Solicitor General countered that, reading the appealed Decision in its entirety, the RTC first discussed in detail the evidence of the prosecution and of the defense, and then proceeded to justify why it found the version of the prosecution more credible than the version of the accused-appellant's guilt.

OUR RULING

The mandate of Section 14, Article VIII of the Constitution finds statutory expression in Section 1, Rule 120 of the Rules of Court, which states:

x x x

“Section 1. Judgment; definition and form. - Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.”

x x x

Oft-quoted is the ruling made in *Yao v. Court of Appeals*[14] as to the importance of this constitutional mandate, viz.:

x x x

“Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding ipse dixit. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

“Thus, the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

“Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter's decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasonings; was merely based on the findings of another court sans transcript of stenographic notes; or failed to explain the factual and legal bases for the award of moral damages.”

x x x

In arguing that the assailed Judgment complied with the said constitutional mandate, the Solicitor General

remarked in its Appellee's Brief:

X X X

“This is hollow. On the contrary, the facts that led to the court's conclusion that appellant is guilty of crime charged are found in pages two (2) to six (6) of the appealed Decision, under the heading “version of the prosecution” where the trial court summarized without comment and in detail the testimonies of the five (5) prosecution witnesses, namely private complainant Arvin Japlit, eyewitness Eduardo Aglib, investigating officer SPO1 Jayvee Aglipay, attending physician Dr. Preval Anthony Amato and police escort Eduardo Reyes. On the other hand, the conclusions of guilt are found on pages twelve (12) to fifteen (15), under the heading 'the court's ruling' where it stated the credibility of the prosecution's version in page twelve, paragraphs seven and eight; page thirteen, paragraphs three, four and seven; and, page fourteen, paragraph three. The other paragraphs under the heading 'the court's ruling' stated why the trial court found the version of the defense implausible and against the natural order of things, as well as the legal principles upon which it based its assessment.”

X X X

It is however readily apparent from a perusal of the assailed Judgment that after the RTC thoroughly discussed the credibility and plausibility of the respective testimonial evidence of the prosecution and the defense and why the prosecution's evidence prevail over that of the defense, it immediately concluded that accused-appellant was guilty of robbery without even attempting to connect these factual findings to the applicable law and legal authority that would justify such a conclusion.

A decision which contains no reference to any legal basis in reaching its conclusions nor cites any legal authority or principle to support its conclusion violates both Section 14, Article VIII of the Constitution and Section 1, Rule 120 of the Rules of Court.[15] Such a transgression justifies the remand of the case to the trial court in order to correct such an infirm decision to comply with the mandate provided in the Constitution.

However, instead of remanding the case to the trial court, We deem it prudent, to avert further delay in the disposition of this case which has been pending for more than ten (10) years already, to resolve the same on the merits considering that all the records, including the transcript of stenographic notes and all the evidence adduced during the trial had been elevated to Us.[16]

The accused-appellant was charged with the crime of Robbery under Article 294 paragraph 5 of the Revised Penal Code, which provides:

X X X

“Article 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 X X 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

To show that robbery was committed, the following elements must be proven: (1) the taking of personal property be committed with violence or intimidation against persons; (2) the property taken belongs to another; and (3) the taking be done with animus lucrandi.[17]

The evidence adduced by the prosecution duly proved the concurrence of the aforesaid elements. The element of

taking of personal property was duly established by the prosecution.

x x x

Fiscal Velasco

Q :

What happened to the driver of the scooter when they arrived?

Edgardo Aglib

A: Julius Payoyo alighted from the owner-type jeep and said that Arvin has a gun.

Q: When you said Julius Payoyo, you are referring to the accused in this case which you pointed at?

A: Yes, sir.

Q: And what was the answer of Arvin when he asked whether he was in possession of a gun?

A: He was not able to answer.

Q: Why?

A: Because Julius Payoyo took the gun, forcibly took the gun.

Q: Forcibly took the what?

A: The gun.

Q: From whom?

A: From Arvin.[18]

x x x

The accused himself did not deny that he took the firearm of the private complainant:

x x x

Atty. Ambrosio

x x x

Q:

At this juncture, Your Honor, Mr. Witness while making that sketch, I have to ask you a very important question. While making that sketch, please tell the Court where is the gun which you are charged now of having robbed or stole from Japlit when you were about to bring him to the hospital?

SPO2 Julius Payoyo

A: I placed it on my left waist, sir.

Q You did not hide it so you can actually make use of that to prove that you have really intention to obtain?

A: No, sir.

x x x

albeit claiming that it was incident to him apprehending the private complainant. Yet, his own witnesses corroborated the prosecution's claim that he grabbed the gun from the private complainant and grappled for its possession.

x x x

Atty. Ambrosio

Q What happened? Will you tell the Honorable Court in your own observation? Aquilino Ramos, Jr.

A: What I saw is that Sgt. Payoyo approached Japlit and Sgt. Payoyo grabbed the gun and they grappled for the gun.[19]

x x x

Q: While they were grappling, what happened, if any, to any of these two (2)?

A: While they were grappling for the gun, and when Sgt. Payoyo got the gun from Japlit, Japlit fell down.

Q: When he fell down, what happened to Japlit, if you know?

A: What I noticed he has a wound bleeding in the head.[20]

x x x

In robbery, there must be an unlawful taking or apoderamiento, which 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.[21] 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.

Private complainant testified that accused-appellant hit his temple twice while grappling for the possession of his gun, viz.:

x x x

Atty. Murillo

Q:

Which was taken from you first, from your narration that the accused took (sic) all of your things, what was the first thing that he took from you?

Arvin Mercado Japlit

A:

My wallet because I showed my license.

Q:

The second one?

A:

My cellphone, together with the speed loader attached to the belt.

Q:

Are there anything more?

A:

No more, sir.

Q:

Is it not that those things during the grapple of that gun were not actually taken but they stumbled on the ground?

A:

No, sir, it cannot just drop because it was tucked in my belt.

Q:

Jow (sic) did Mr. Po2 Julius Payoyo grab those things, cellphone with speed-loader attached to your body, how did he do it?

Fiscal Velasco: The question is misleading, Your Honor, because the cellphone and the speedloader were not attached to the body but to the belt.

Atty. Murillo: To the belt, I stand corrected.

A:

When he hit me in my right temple and I fell down that was the time that they got my belongings.

Q:

When you said “they got”, who are the persons you are referring to?

A:

What I recognized is SPO2 Julius Payoyo because he was in uniform and his companions were in civilian clothes.[22]

x x x

The fact that he was hit by the accused-appellant in his temple with the butt of the latter's gun was corroborated by the testimony of prosecution witness Edgardo Aglib. All the witnesses to the incident from both sides were one in claiming that accused-appellant grabbed the gun and grappled with the private complainant for its possession. It was obvious that the taking of the gun by the accused-appellant was done without the consent of the owner and by means of violence against or intimidation of persons.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified.[23] Intent to gain is presumed from unlawful taking and can only be negated by special circumstances

showing a different intent on the part of the perpetrator.[24] Intent to gain is a mental state whose existence is demonstrated by a person's overt acts.[25] Accused-appellant failed to overcome the presumption that there was intent to gain on his part when he forcibly took private complainant's gun from him. Private complainant showed the accused-appellant that the firearm was licensed and that he has permit to carry. The gun was likewise tucked in private complainant's waist. There is therefore no reason for accused-appellant to confiscate the said firearm.

From the foregoing, the prosecution has established, beyond reasonable doubt, the guilt of the accused-appellant of the crime of Robbery under Article 294, paragraph 5 of the Revised Penal Code.

Last point. The Solicitor General calls attention to the incorrect minimum period of penalty imposed by the trial court in its Decision.

Under Article 294 (5) of the Revised Penal Code, the imposable penalty is prision correccional in its maximum period to prision mayor in its medium period. Applying the Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be that which, in view of the attending circumstances, could be properly imposed by the Code and the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense. There being no attending circumstances, the proper imposable penalty is prision mayor in its minimum period, from which the maximum term shall be derived. The minimum term should be anywhere within the range of arresto mayor in its maximum period to prision correccional in its medium period.

The penalty imposed by the RTC, which is the indeterminate penalty of four (4) years and two (2) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, is clearly erroneous. We thus modify the indeterminate penalty imposed upon the accused-appellant to six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Judgment dated March 18, 2010 rendered by the Regional Trial Court of Manila, Branch 19, in Criminal Case No. 03-214292 is AFFIRMED but with MODIFICATION in that the Accused-Appellant SPO2 Julius Payoyo is sentenced to an indeterminate penalty of six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum.

SO ORDERED.

Abdulwahid (Chairperson) and Barza, JJ., concur.

[1] Rollo, pp. 10-24.

[2] Record, p. 1.

[3] Per Order dated September 17, 2003, at Record, p. 45.

[4] Per Order dated October 27, 2003, at Record p. 47.

[5] On February 24, 2004.

[6] On September 22, 2004.

[7] On September 21, 2005.

[8] Who testified on March 6, 2006.

- [9] Record, p.14.
- [10] On March 6, 2006.
- [11] Who testified on October 4, 2006.
- [12] On April 22, 2008.
- [13] On September 17, 2008.
- [14] G.R. No. 132428, October 24, 2000.
- [15] *People v. Ferrer*, G.R. No. 148821, July 18, 2003.
- [16] See *People v. Lizada*, G.R. No. 143468-71, January 24, 2003; *People v. Bugarin*, G.R. No. 110817-22, June 13, 1997; *Ongson v. People*, G.R. No. 156169, August 12, 2005.
- [17] *Briones v. People*, G.R. No. 156009, June 5, 2009, citing *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67, 85.
- [18] TSN dated September 22, 2004, pp. 10-11.
- [19] TSN dated September 17, 2008, p. 16.
- [20] *Id.*, p. 19.
- [21] *Sazon v. sandiganbayan*, G.R. No. 150873, February 10, 2009, citing *People v. Hernandez*, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 119.
- [22] TSN dated February 24, 2004, pp. 43-45.
- [23] *People v. Diu*, G.R. No. 201440, April 3, 2013, citing *People v. De Jesus*, 473 Phil. 405, 426-428 (2004).
- [24] *Briones v. People*, *supra.*, citing *People v. Donato del Rosario*, G.R. No. 13106, June 20, 2001, 359 SCRA 166, 174, and *People v. Danilo Reyes*, G.R. No. 135682, March 26, 2003, 399 SCRA 528, 534.
- [25] *Id.* citing *Dunlao v. Court of Appeals*, G.R. No. 111343, August 22, 1996, 260 SCRA 788, 793, citing *Lim v. Court of Appeals*, 222 SCRA 286, 287 (1993).

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