ZENAIDA V. SAZON, PETITIONER, VS. SANDIGANBAYAN (FOURTH DIVISION), RESPONDENT.

G.R. No. 150873. February 10, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to nullify the Decision[1] of the Sandiganbayan, dated July 26, 2001, in Criminal Case No. 18257, finding the petitioner Zenaida V. Sazon guilty beyond reasonable doubt of Robbery Extortion.[2] Likewise assailed is the Sandiganbayan's Resolution[3] dated November 16, 2001 denying petitioner's motion for reconsideration.

The facts, as established by the evidence presented, are as follows:

Petitioner was a Senior Forest Management Specialist of the Department of Environment and Natural Resources (DENR), National Capital Region (NCR).[4] On September 24, 1992, the DENR-NCR issued Travel Order No. 09-92-409 directing the petitioner and a certain Carlos Gubat I (Gubat) to proceed to Karuhatan and Navotas, both in Metro Manila, to perform the following:

> - To investigate [an] intelligence report on the alleged arrival of illegal shipment of poles and piles to Navotas, Metro Manila; and
>
> - [To] verify illegal resaw operation of Honway Lumber, Karuhatan, Metro Manila.[5]

On September 25, 1992, petitioner and her team, composed of Gubat and Forester Nemesio Ricohermoso, conducted a surveillance in Karuhatan and Navotas. While looking for the office of Vifel Shipyard, subject of the travel order, the team chanced upon the R&R Shipyard (R&R) and asked from the lady guard for Mr. Rodrigo Opena (Mr. Opena), the Operations Manager.[6] As the petitioner knew Mr. Opena, the former wanted to inquire from the latter where Vifel Shipyard was.[7] In the course of their conversation with the lady guard, the team spotted squared logs, which they claimed to be "dungon" logs piled at the R&R compound. Upon a closer look, the team noticed that the squared logs were mill-sawn and bore hatchet marks with a number indicating inspection by the DENR. Since "dungon" logs were banned species, the team asked for the pertinent documents relative thereto. However, the same could not be produced at that time; hence, they decided to return on October 1.[8]

On October 1, 1992, petitioner and her team returned to R&R to check the necessary documents they were looking for. Yet again, Mr. Opena could not produce the documents as they were then allegedly in the possession of the auditing section of their main office. Petitioner insisted that the subject logs were banned species and, thus, threatened Mr. Opena that he could be arrested and that the logs could be confiscated. Mr. Opena, however, claimed that the logs that were seen by the petitioner were "yakal" and "tangile" and not "dungon."[9]

On October 7, 1992, Atty. Teresita Agbi, the lawyer of R&R, met with the petitioner to talk about the subject logs. Petitioner instructed Atty. Agbi to proceed to the bakeshop at the ground floor of the former's office.[10] There, Atty. Agbi informed the petitioner that she had in her possession the receipts covering the subject logs; but

the latter averred that the receipts were not sufficient as there were additional requirements[11] to be submitted. Believing that Atty. Agbi could not produce the required documents, petitioner initially demanded the payment of P300,000.00 if no papers would be submitted; P200,000.00 if incomplete; and P100,000.00 if the papers were complete.[12]

On October 13, 1992, petitioner made a final demand of P100,000.00 in exchange for the favor of "fixing" the papers of the alleged "hot logs." She even offered Atty. Agbi P25,000.00 as her share in the amount.[13] Atty. Agbi reported the matter to the police. Consequently, an entrapment operation against the petitioner was planned wherein Atty. Agbi would agree to pay P100,000.00 to settle the issue with the petitioner.[14]

On October 14, 1992, the day of the scheduled entrapment operation, Atty. Agbi, together with Senior Police Officer 1 Edwin Anaviso (SPO1 Anaviso), SPO1 Pablo Temena (SPO1 Temena) and SPO2 Renato Dizon (SPO2 Dizon) went to the Max's Restaurant in EDSA, Caloocan City, where they would meet the petitioner.[15] Upon seeing Atty. Agbi, petitioner instructed the former to drop the envelope containing the money in the taxicab parked outside. Atty. Agbi, however, could not comply since her P25,000.00 commission had not yet been segregated from the P100,000.00. Petitioner thus offered to segregate it at the ladies' room.[16] As soon as Atty. Agbi handed over the envelope containing the money, petitioner placed her wallet and handkerchief inside the envelope;[17] then SPO2 Dizon immediately accosted and handcuffed the petitioner while SPO1 Temena took pictures of the incident.[18]

Petitioner, for her part, denied the above accusation. She averred that it was in fact Atty. Agbi who proposed the settlement which she, however, rejected. When offered a brown envelope containing money, petitioner allegedly stood up and prepared to leave, but a man came from nowhere and immediately handcuffed her while another man took pictures.[19]

At about 11 o'clock in the evening, petitioner was brought to the assistant prosecutor for inquest.[20] Thereafter, an Information for Robbery Extortion was filed against the petitioner, the accusatory portion of which reads:

> That on or about October 14, 1992, in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the supervisor of the Department of Environment and Natural Resources (D[E]NR), taking advantage of her public position and which offensed (sic) was committed in relation to her office, by means of intimidation and with intent to gain, did then and there willfully, unlawfully and feloniously demand, take and extort from the IRMA FISHING & TRADING COMPANY as represented herein by ATTY. TERESITA A. AGBI, the amount of P100,000.00 to prevent the confiscation of more or less thirty (30) pcs. of logs, which are found in the compound of RNR Marine Inc., purportedly for unauthorize[d] possession of the said logs, and belonging to the said Irma Fishing & Trading Company, to the damage and prejudice of the said owner in the aforementioned amount of P100,000.00.
>
> CONTRARY TO LAW.[21]

Upon arraignment, petitioner entered a plea of "Not Guilty."[22]After trial on the merits, the Sandiganbayan rendered a Decision[23] convicting the petitioner of the crime of robbery extortion. The dispositive portion of the assailed decision is quoted hereunder:

> WHEREFORE, the accused, ZENAIDA SAZON y VENTURA, is hereby found GUILTY beyond reasonable doubt of the crime of ROBBERY EXTORTION, defined under Article 293, and penalized under paragraph 5, Article 294 (as amended by Section 9, Republic Act No. 7659) both of the Revised Penal Code, and, there being no aggravating or mitigating circumstance that attended the commission of the crime, she is hereby sentenced, under the Indeterminate Sentence Law, to suffer the penalty of imprisonment of from Two (2) Years and Three (3) Months of prision correccional, as minimum, to Seven (7) Years of prision mayor, as maximum, and to pay the costs.

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SO ORDERED.[24]

The court found that the elements of robbery with intimidation were established by the prosecution.[25] It was pointed out that if the interest of petitioner was merely the submission by R&R of the required documents, she should have required that they meet at her office and not at a restaurant.[26] Her liability, said the court, was not negated by the eventual admission of Irma Fishing and Trading Co. that the required documents could not be produced.[27]

Hence, the instant petition on the following grounds:

- WITH DUE RESPECT, THE RESPONDENT COURT GRAVELY ERRED IN CONCLUDING THAT THE VERSION OF THE PROSECUTION TENDS TO SHOW THAT ALL THE ELEMENTS OF THE CRIME OF ROBBERY WITH INTIMIDATION ARE PRESENT.

- WITH DUE RESPECT, THE RESPONDENT COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[28]

Apart from the instant criminal case, the DENR filed an administrative complaint against the petitioner for grave misconduct in the performance of official duty, but the same was dismissed for lack of interest on the part of the complainant. Another administrative case was filed before the Office of the Ombudsman, but the same was likewise dismissed.[29]

Petitioner's insistence on her acquittal of the crime of robbery with intimidation hinges on the alleged absence of the elements of the crime. She specifically questions the Sandiganbayan's conclusion that she employed intimidation in order to extort P100,000.00 from R&R. Petitioner strongly doubts that the threat of confiscation of the subject logs created fear in the mind of R&R or its employees. Absent such element, says the petitioner, her exoneration is clearly indicated.[30]

We do not agree with the petitioner.

In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court.[31] The Supreme Court should not be burdened with the task of re-examining the evidence presented during the trial of the case. This rule, however, admits of exceptions, to wit: 1) when the conclusion is a finding grounded entirely on speculation, surmise or conjectures; 2) the inference made is manifestly mistaken; 3) there is grave abuse of discretion on the part of the lower court or agency; 4) the judgment is based on a misapprehension of facts; 5) said findings of fact are conclusions without citation of specific evidence on which they are based; and 6) the findings of fact of the Sandiganbayan are premised on an absence of evidence on record.[32] However, we find no reason to disturb the factual findings of the Sandiganbayan, as none of these exceptions is present in this case.

Petitioner was charged with robbery defined and penalized under Articles 293[33] and 294(5)[34] of the Revised Penal Code (RPC), otherwise known as simple robbery. Simple robbery is committed by means of violence against or intimidation of persons.[35] The elements of robbery as defined in Article 293 of the RPC 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.[36]

Indeed, the prosecution adequately established the above elements.

As to what was taken, it is undisputed that petitioner demanded and eventually received from R&R P100,000.00, a personal property belonging to the latter. The amount was placed inside a brown envelope and was given to

petitioner while inside Max's Restaurant in EDSA, Caloocan City.

As to how the money was taken, it was proven that P100,000.00 was unlawfully taken by the petitioner from R&R, with intent to gain and through intimidation. 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.[37] 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. In the instant case, it was adequately proven that petitioner received and took possession of the brown envelope containing the money; she even placed her wallet and handkerchief inside the envelope. At that point, there was already "taking."

As a public officer employed with the DENR, petitioner was tasked to implement forestry laws, rules and regulations. Specifically, she had the power to make reports on forestry violations which could result in the eventual confiscation of logs if the possession thereof could not be justified by the required documents; and the prosecution of violators thereof. Undoubtedly, petitioner could not demand and eventually receive any amount from private persons as a consideration for the former's non-performance of her lawful task. More so, in the instant case where the petitioner threatened the complainants with possible confiscation of the logs and prosecution if they would not accede to her demand for P100,000.00. Under such circumstances, the eventual receipt of the said amount by the petitioner makes the taking "unlawful."

To constitute robbery, the taking should be accompanied by intent to gain. 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.[38] Actual gain is irrelevant as the important consideration is the intent to gain.[39] Having established that the amount of P100,000.00 was unlawfully taken by the petitioner from R&R for her personal benefit, intent to gain was likewise proven.

Lastly, we agree with the Sandiganbayan that petitioner employed intimidation in order to obtain the amount of P100,000.00 from R&R.

Intimidation is defined in Black's Law Dictionary as unlawful coercion; extortion; duress; putting in fear.[40] 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.[41]

Applying this principle to the pertinent facts of the instant case, it is noteworthy that: On September 25, 1992, petitioner discovered the questioned logs and asked that the supporting documents be shown; on October 1, she formally demanded the submission of the required documents; on October 7, she demanded payment of a particular sum of money while offering to "fix" the problem; on October 13, she made the final demand; and on October 14, the representatives of R&R parted with their P100,000.00. While it appears that initially, petitioner only demanded the submission of the supporting documents to show that R&R's possession of the subject logs was legal, she agreed to talk about the matter outside her office. This circumstance alone makes her intentions highly suspect. The same was confirmed when petitioner eventually demanded from R&R the payment of a particular sum of money, accompanied by threats of prosecution and confiscation of the logs.

From the foregoing, and in light of the concept of intimidation as defined in various jurisprudence, we find and so hold that the P100,000.00 "grease money" was taken by the petitioner from R&R's representatives through intimidation. By using her position as Senior Management Specialist of the DENR, petitioner succeeded in coercing the complainants to choose between two alternatives: to part with their money, or suffer the burden and

humiliation of prosecution and confiscation of the logs.

Indeed, this Court had, in a number of cases involving substantially the same factual milieu as in the present case, convicted the accused of the crime of robbery with intimidation. These include the early cases of People v. Francisco[42] and United States v. Sanchez,[43] and the more recent cases of Fortuna v. People[44] and Pablo v. People.[45]

In People v. Francisco, the accused, who was then a sanitary inspector in the Philippine Health Service, discovered during an inspection of the merchandise in Sy Ham's store that the lard was unfit for consumption. He then demanded from Sy Ham the payment of P2.00 with threats of prosecution and arrest. For fear of being arrested, prosecuted, and convicted, Sy Ham immediately paid the amount demanded.

In United States v. Sanchez, two police officers demanded from a Chinese, who allegedly violated the Opium Law, P500.00, accompanied by threats to take him before the proper authorities and have him prosecuted. For fear of being sent to prison for a long term, the Chinese paid a negotiated amount of P150.00

In Fortuna v. People and Pablo v. People, three policemen frisked Diosdada and Mario Montecillo, and accused the latter of illegal possession of a deadly weapon. The policemen threatened Mario that he would be brought to the police station where he would be interrogated by the police, mauled by other prisoners and heckled by the press. The apprehending policemen took from Mario P1,000.00. They likewise rummaged Diosdada's bag where they found and eventually pocketed P5,000.00. They further demanded from Diosdada any piece of jewelry that could be pawned. Thereafter, the two were released by the policemen.

In all of the above cases, the Court was convinced that there was sufficient intimidation applied by the accused on the offended parties inasmuch as the acts of the accused engendered fear in the minds of their victims and hindered the free exercise of their will.

As in the aforesaid cases, petitioner herein was a public officer who, in the performance of her official task, discovered the subject logs which she claimed to be banned species. By reason of said discovery, she had the power to bring the offenders to the proper authorities. As such public officer, she abused her authority and demanded from the offenders the payment of a particular sum of money, accompanied by an assurance that the latter would no longer be prosecuted. Eventually, money was given to the petitioner. We, therefore, find no reason to depart from the above conclusion.

We would like to stress that the Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. This means proving the guilt of the accused beyond reasonable doubt. Reasonable doubt is present when, after the comparison and consideration of all the evidence adduced, the minds of the judges are left in a condition that they cannot say they feel an abiding conviction, a moral certainty, of the truth of the charge, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it.[46] To be sure, proof beyond reasonable doubt does not demand absolute certainty and the exclusion of all possibility of error.[47]

We find, however, that the Sandiganbayan failed to appreciate the aggravating circumstance of "abuse of public position."[48] The fact that petitioner was Senior Forest Management Specialist of the DENR situated her in a position to perpetrate the offense. It was on account of petitioner's authority that the complainants believed that they could be prosecuted and the subject logs confiscated unless they gave her what she wanted. Consequently, we find that a modification of the penalty imposed by the Sandiganbayan is in order.

Article 294(5) of the RPC fixes the penalty for simple robbery at prision correccional in its maximum period to prision mayor in its medium period, the range of which is from four (4) years, two (2) months and one (1) day to

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ten (10) years. Considering the aggravating circumstance of abuse of public position, the penalty should be imposed in its maximum period; and applying the Indeterminate Sentence Law, the same should likewise be the maximum term of the indeterminate penalty. The minimum term, on the other hand, shall be taken from the penalty next lower in degree which is arresto mayor maximum to prision correccional medium in any of its periods, the range of which is four (4) months and one (1) day to four (4) years and two (2) months.[49]

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Sandiganbayan, dated July 26, 2001, and its Resolution dated November 16, 2001 in Criminal Case No. 18257, are AFFIRMED WITH THE MODIFICATION that petitioner Zenaida V. Sazon is sentenced to the indeterminate penalty of Two (2) Years, Ten (10) Months and Twenty-One (21) Days of prision correccional, as minimum, to Eight (8) Years and Twenty-One (21) Days of prision mayor, as maximum.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Nicodemo T. Ferrer, with Associate Justices Narciso S. Nario and Rodolfo G. Palattao, concurring; rollo, pp. 33-60.

[2] Also referred to herein as Robbery with Intimidation and Simple Robbery.

[3] Rollo, pp. 61-71.

[4] Id. at 36.

[5] Id. at 36-37.

[6] The latter was also the Assistant Manager of Irma Fishing and Trading Company, a sister company of R&R Shipyard.

[7] Rollo, pp. 37-38.

[8] Id. at 38.

[9] Id. at 41.

[10] Id.

[11] These alleged additional requirements were as follows:

- Certificate of Lumber Origin;

- Certificate of Transport Agreement;

- Auxiliary Invoice;

- Special Permit issued by the DENR Secretary;

- Tally Sheets; and

- Inspection Report from the DENR Field Personnel; id. at 42.

[12] Rollo, p. 43.

[13] Id.

[14] Id. at 44.

[15] Id. at 44-45.

[16] Id. at 45.

[17] Id. at 56.

[18] Id. at 45.

[19] Id. at 48-49.

[20] Id. at 50.

[21] Records, p. 1.

[22] Id. at 28.

[23] Supra note 1.

[24] Rollo, pp. 58-59.

[25] Id. at 51-56.

[26] Id. at 57.

[27] Id. at 57-58.

[28] Id. at 17-18.

[29] Id. at 50-51.

[30] Id. at 284-289.

[31] Baldebrin v. Sandiganbayan, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 638.

[32] Id.; see People v. Sandiganbayan, 456 Phil. 136, 142 (2003).

[33] 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.

[34] 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.

[35] People v. Suela, 424 Phil. 196, 232 (2002).

[36] People v. Pat, 324 Phil. 723, 741-742 (1996).

[37] People v. Hernandez, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 119.

[38] Id.; People v. Bustinera, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 296; People v. Obillo, 411 Phil. 139, 150 (2001).

[39] People v. Bustinera, supra.

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[40] People v. Alfeche, Jr., G.R. No. 102070, July 23, 1992, 211 SCRA 770, 779.

[41] Luis B. Reyes, The Revised Penal Code, Book Two, p. 642, citing People v. Marco, 12 C.A. Rep. 377.

[42] 45 Phil. 819 (1924).

[43] 26 Phil. 83 (1913).

[44] 401 Phil. 545 (2000).

[45] G.R. No. 152481, April 15, 2005, 456 SCRA 325.

[46] Fernan, Jr. v. People, G.R. No. 145927, August 24, 2007, 531 SCRA 1, 30-31, citing People v. Balacano, 391 Phil. 509 (2000).

[47] People v. Rayles, G.R. No. 169874, July 27, 2007, 528 SCRA 409, 416; Calimutan v. People, G.R. No. 152133, February 9, 2006, 482 SCRA 44, 57.

[48] Pablo v. People, supra note 45, at 331; Fortuna v. People, supra note 44, at 552.

[49] Ocampo v. People, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 562-563.

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