DUNDEE A. VIERNES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 161970. June 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Regional Trial Court (RTC) of Manila, Branch 30 convicted the accused-herein petitioner Dundee Viernes y Asio of violation of Presidential Decree (P.D.) No. 532 (the Anti-Piracy and Anti-Highway Robbery Law of 1974).[1] On appeal, the Court of Appeals, by Decision[2] of July 31, 2003, modified the trial court decision by finding petitioner guilty of simple robbery under Article 294 of the Revised Penal Code.

On November 15, 1992, at around 7:00 in the evening, while Josefina dela Cruz (Josefina) and her husband Ronaldo Lopango (Lopango) were on board a passenger jeepney along 1[st] Avenue, R. Papa St., Manila, four of eight co-passengers declared a hold-up.[3] Lopango resisted the attempt to hold him up by one of the four by kicking him, but another stabbed him three times causing him to fall from the jeepney. Josefina also fell from the jeepney[4] upon which she brought Lopango to the Jose Reyes Memorial Hospital where he died[5] after a few minutes.[6]

About three hours and twenty five minutes after the incident or at around 10:25 in the evening of November 15, 1992, Josefina repaired to the Caloocan Police Station where she gave a sworn statement before PO3 Ricardo Concepcion.

x x x x

03. T: Bakit ka naririto ngayon sa aming tanggapan at nagpapaimbistiga?

S:

Tungkol po sa naganp (sic) na hold-up sa sinasakyan namin ng asawa kong si RONALDO LOPANGO na pampasaherong jeep, na ikinamatay niya.

04. T:

Anong oras, petsa at lugar ba nangyari itong insidenteng sinasabi mo?

S:

Pagitan po ng alas-6:30 at alas-7:00 ng gabi, ngayong, Nobyembre 15, 1992 duon po sa Avenida malapit sa kanto ng Sta. Catalina, 1[st] Avenue, lungsod ng Kalookan.

05. T:

Bukod sa inyo ng asawa mo, ilan pa'ng pasahero ng jeep na sinasakyan ninyo?

S:

Bukod po doon sa apat (4) na hold-uppers ay punuan ang jeepnasinasakyan naming, mga sampu (10) ang sakay.

06. T:

Saan kayo patungo?

S:

Pauwi na po kami ng Oroquieta, Sta. Cruz, Maynila kaya biyaheng Recto ang sinakyan namin.

07. T:

Magkano ang particular na na-hold-up sa inyo?

S:

Wala pong naholdap sa amin dahil lumaban nga ang asawa ko.

x x x x [7] (Emphasis and underscoring supplied)

Three days later or on November 18, 1992, Josefina repaired to the WPDC-PN, Manila before which she executed a sworn statement taken by SPO1 Rey Mira and SPO1 Ernesto Agustin alleging that the robbers took her bag containing used clothes and P3,000 cash "inserted" therein.[8]

On December 9, 1992, petitioner was charged before the Manila RTC by the Manila City Prosecutor's Office with violation of P.D. No. 532 alleged to have all been committed as follows:

> That on or about November 15, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating together with three others whose true names, real identities and present whereabouts are still unknown and helping one another with intent to gain and by means of force, violence and intimidation, to wit: by then and there pointing a knife(beinte nueve) to one Josefina dela Cruz and grabbing her plastic bagcontaining P3,000.00 along R. Papa St., Tondo, this City, a street/s used by persons or vehicles for the movement or circulation of persons or transportation of goods, articles or property or both, did then and there willfully, unlawfully and feloniously take, rob and carry away a plastic bag containing P3,000.00 belonging to Josefina dela Cruz against her will, to the damage and prejudice of said owner in the aforesaid amount of P3,000.00, Philippine Currency.[9] (Underscoring supplied)

When arraigned, the accused pleaded not guilty.

Testifying as the lone witness for the prosecution, Josefina described how the robbery and the stabbing of her husband took place. And she narrated that on the night of the incident, by-standers apprehended petitioner whom she recognized as one of the malefactors since the jeepney was lighted[10] and from whom she recovered herbelongings except the P3,000 cash.[11]

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On cross-examination, Josefina admitted that she did not know what transpired after she fell off the jeepney,[12] and that when she executed a sworn statement before the Caloocan police, she forgot to report the loss of her bag as "it slipped from [her] mind already because of [her] husband."[13]

On the other hand, petitioner, proffering alibi, gave the following testimony: At about 7:00 p.m. of November 15, 1992, on the request of his mother who was celebrating her birthday, he went to Tambunting Compound at Blumentritt to fetch his cousin Rudy Asio. His cousin having already left the compound, he decided to walk home. As he was passing along Lico Street, a Ford Fiera and a jeep bearing several policemen who, pointing to him, asked a passenger thereof "Ito ba? Ito ba?" after which he was arrested.[14] He was brought to Precinct 7 of the Manila police where he was told that he was the "hold-upper" and was tortured to make him confess to the crime.[15]

Petitioner further narrated that after two days of detention, a woman who turned out to be Josefina arrived at his place of detention and on seeing him, she told the police that he was not the culprit but the police went on to maul him, and continued to detain him for nine days;[16] and the case filed against him, together with a certain Edward Paler y Villanueva and two others for attempted robbery with homicide before the Caloocan RTC had already been dismissed by Branch 125 thereof.[17]

On cross-examination, petitioner denied having been mobbed by bystanders[18] and investigated at the police station.[19]

Petitioner submitted a certification from the Records Management and Archive Office of Manila stating that his mother, Elisa Asio, was indeed born on November 15, 1937.[20]

Corroborating petitioner's testimony, his sister Elizabeth Mones testified as follows: Petitioner was asked to fetch their cousin at Blumentritt for their mother's birthday at around 7:00 to 7:30 in the evening of November 15, 1992.[21] He failed to return, however, on that night so she, accompanied by her mother and her uncle, searched for him the following day at nearby hospitals.[22] They later found him detained as a suspect in a robbery charge at Precinct 7 at Abad Santos, Manila,[23] with injuries allegedly due to the mauling he suffered for refusing to confess to the charge.[24] At the police precinct, she saw Josefina who denied before the police[25] that petitioner participated in the commission of the crime. Also at the precinct, the police, who asked for the amount of P2,000 for the transfer of petitioner to the City Jail,[26] prohibited subjecting petitioner to medical examination.[27]

On cross-examination, she admitted that she did not file any complaint against the police even if her brother was tortured by the police. [28]

By decision of October 12, 1995, the trial court found petitioner guilty of highway robbery under P.D. No. 532. The dispositive portion of the judgment reads:

> "WHEREFORE, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of Violation of P.D. 532, and there being no mitigating or aggravating circumstances, hereby sentences him to suffer the penalty of TWELVE (12) YEARS and TEN (10) MONTHS of Reclusion Temporal and to indemnify private complainant Josefina dela Cruz the sum of P3,000.00 with legal interest thereon from the filing of the complaint until fully paid and to pay the costs of suit.
>
> SO ORDERED."[29]

As stated early on, the crime for which petitioner was convicted by the trial court was modified on appeal by the Court of Appeals to simple robbery. The decretal text of the appellate court's decision reads:

> WHEREFORE, the assailed Decision dated October 12, 1995 of the Regional Trial Court of Manila, Branch 30 in Criminal Case No. 113008 is hereby MODIFIED. Accused DUNDEE VIERNES is found GUILTY

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> beyond reasonable doubt of Simple Robbery penalized under Art. 294 of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of imprisonment of 2 years, 10 months and 20 days of prision correccional as minimum and 8 years and 20 days of prision mayor as maximum and all its accessory penalties. (Emphasis and italics in the original)
>
> SO ORDERED.[30]

Hence, the present appeal.

Petitioner argues that his guilt was not proved beyond reasonable doubt.[31] He invites attention to the failure of the prosecution to show that the illumination of the jeepney which allegedly bore Josefina and her husband was adequate enough to enable one to identify him with certainty as in fact Josefina was patently hesitant to identify him as one of the malefactors, as discerned from the fact that the case filed against him for attempted robbery with homicide before the RTC of Caloocan was dismissed for lack of interest to prosecute.[32] He likewise invites attention to the failure of the prosecutionto present any of the police officers who apprehended and investigated him.[33]

Petitioner further draws attention to inconsistencies which to him taint Josefina's credibility, to wit: In her affidavit executed before the Caloocan police more than three hours after the incident, she categorically stated that the alleged robbery was committed at Sta. Catalina, Caloocan City and that no valuables were taken from her. Whereas three days after the incident, she again reported the same alleged robbery to the Manila police before which she declared that the incident occurred at R. PapaStreet in Manila and that she lost P3,000 on the occasion thereof.[34]

Petitioner in fact charges Josefina to have even conspired with the police officers in torturing him so as to force him to admit his participation in the crime.[35]

After a considered review of the records of the case, this Court finds that the guilt of petitioner has not been proven beyond reasonable doubt.

On top of the inconsistencies attention to which petitioner has drawn, Josefina, in her sworn statement given before the Manila Police on November 18, 1992, narrated that the clothes and the money taken from her were not recovered.

> 06. T:
>
> Maaari bang sabihin mo sa akin kung ano ang mga nahold up sa iyo?
>
> S:
>
> Yung pong aming mga damit na kung saan nakalagay sa loob ang aming pera na nagkakahalaga ng P3,000.00.
>
> 07. T:
>
> Ito ba namang mga damit ninyo at yung pera na nakalagay doonay nabawi mo?
>
> S:
>
> Hindi na po.[36] (Emphasis and underscoring supplied)

At the witness stand, however, Josefina declared that the things petitioner took from her were returned to her "one by one."

Q

How do you know that the accused has a companion who announced that there was a hold-up?

A

Because I can recognize and the things the accused were able to get were returned to us one by one, sir. [37] (Emphasis supplied)

In her sworn statement before the Caloocan police given on November 15, 1992, Josefina declared:

x x x x

08. T:

Isalaysay mo nga ang mga pangyayaring may kinalaman dito sa insidenteng sinasabi mo?

S :

x x x Ang ginawa naman ng asawa ko na nasa dulong upuan ay lumaban at pinagsisipa ang hold-upper sa estribo pero pinagsasaksak siya at hindi niya naagaw ang patalim nuong mama. Iyong tatlong kasama nuong hold-upper na nakasabit ay naglabas din ng kutsilio at abala duon sa ibang pasahero na pulos babae, pagkahulog nuong nasa estribo ay sumabit kaming mag-asawa para bumaba pero tuloy-tuloy ang takbo ng jeep dahil natutukan din ang driver. Nuong mahulog ang mister ko ay nakabitaw na rin ako sa jeep kaya pulos gasgas din ako. Ang mister ko pa ang nagpapara ng tricycle na naghatid sa amin sa Jose Reyes Hospital pero pagdating doon ay namatay ang asawa ko dahil sa tatlong (3) tama ng saksak sa katawan, bandang dibdib.

x x x x[38] (Emphasis and underscoring supplied)

At the witness stand, however, Josefina declared that petitioner "pushed" her off the jeepney.

Q

Under what circumstances did you come to know a person by the name of Dundee Viernes?

A

I saw him carrying my things, sir.

Q

How did [sic] the accused able to carry your things?

A

We fell from the jeep because Dundee Viernes pushed us, he carried our things and the hold-up continued inside the jeepney, sir.[39] (Emphasis and underscoring supplied)

In crimes of robbery, the offender must be proven to have unlawfully taken personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything.[40]

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While the general rule is that contradictions and discrepancies between the testimony of a witness and his sworn statement do not necessarily discredit him since ex parte statements are generally incomplete, the rule is not without exception as, e.g., when the omission in the sworn statement refers to a very important detail of the incident which the one relating the incident as an eyewitness would not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court.[41]

Where a trial court overlooks certain facts of consequence or circumstances of significance which may affect the result of the case, its assessment of the credibility of a witness may be set aside.[42]

Josefina's assertion that the taking of her bag "slipped from [her] mind because of [her] husband"[43] taxes credulity as the hold-up occurred only three hours earlier. To forget to mention the loss of the bag maybe excusable, but to categorically state that nothing was taken from them when she was asked, thus:

> x x x x
>
> 07. T: Magkano ang particular na na-hold-up sa inyo?
>
> S: Wala pong naholdap sa amin dahil lumaban nga ang asawa ko.
>
> x x x x,[44] (Underscoring supplied)

infirms Josefina's overall credibility.[45]

While the rule is settled that the conviction of an accused may be based on the testimony of one witness alone, provided it is positive and credible, testimonies being weighed, not numbered,[46] Josefina's uncorroborated testimony is, as shown above, tainted with inconsistencies on material points to thus lead this Court to discredit it and uphold the constitutional presumption of innocence of petitioner.

WHEREFORE, accused-petitioner Dundee Viernes y Asio is, on reasonable doubt, ACQUITTED of the charge of violation of P.D. No. 532.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 39-42.

[2] Id. at 58-66, penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Portia Aliño-Hormachuelos and Edgardo Cruz.

[3] TSN, March 17, 1993, p. 7.

[4] Ibid. Vide also TSN, April 15, 1993, p. 3.

[5] Supra note 3 at 6.

[6] Records, p. 5.

[7] Exhibit "1," records, p. 27.

[8] Records, p. 3.

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[9] Information, records, p. 1.

[10] Supra note 3 at 18.

[11] Id. at 10.

[12] TSN, April 15, 1993, p. 4.

[13] Id. at 7.

[14] TSN, October 12, 1994, pp. 12-14.

[15] Id. at 13-17.

[16] Id. at 18.

[17] Id. at 23-24.

[18] TSN, October 19, 1994, pp. 6-7.

[19] Id. at 7.

[20] Supra note 14 at 8.

[21] TSN, February 2, 1994, p. 5.

[22] Id. at 6-7.

[23] Id. at 7.

[24] Id. at 8.

[25] Id. at 10.

[26] Id. at 11.

[27] Supra.

[28] TSN, February 10, 1994, p. 6.

[29] Rollo, pp. 41-42

[30] Id. at 66.

[31] Id. at 17.

[32] Id. at 19-20.

[33] Id. at 19.

[34] Id. at 20.

[35] Id. at 21.

[36] Vide Records, p. 3.

[37] Supra note 3 at 10.

[38] Vide Exhibit "1."

[39] Supra note 3 at 6-7.

[40] Vide Article 293 of the Revised Penal Code. Section 2(e) of P.D. No. 532 also defines Highway Robbery/Brigandage as the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine Highway .

[41] People v. Español, G.R. No. 105676, April 10, 1996, 256 SCRA 137, 145; People v. Alvarado, G.R. No. 104399, March 20, 1995, 242 SCRA 464, 472; Regalado, supra at 691, citing People v. Anggot, No. L-38101-02, June 29, 1981, 105 SCRA 168, 175 and People v. Amon, No. L-48929, November 28, 1984, 133 SCRA 384, 390. Vide also VI Herrera, REMEDIAL LAW, 1999 ed. at 374-376.

[42] People v. Alvarado, supra at 469; People v. Gornes, G.R. No. 104869, February 23, 1994, 230 SCRA 270, 275.

[43] TSN, April 15, 1993, p. 7.

[44] Exhibit "1," Records, p. 27.

[45] People v. Rodriguez, G.R. No. 95902, February 4, 1992, 205 SCRA 791, 800.

[46] People v. Obello, G.R. No. 108772, January 14, 1998, 284 SCRA 79, 89; People v. Rayray G.R. No. 90628, February 1, 1995, 241 SCRA 1, 6.

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