

VALCESAR ESTIOCA Y MACAMAY, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 173876. June 27, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court,[1] petitioner Valcesar Estioca y Macamay prays for the reversal of the Decision [2] of the Court of Appeals in CA-G.R. CR No. 00036 dated 30 June 2006, affirming with modification the Decision[3] and Order[4] dated 5 April 2004 and 17 August 2004, respectively, of the Ozamiz City Regional Trial Court (RTC), Branch 35, in Criminal Case No. 3054, finding him guilty of robbery under Article 299, subdivision (a), number (2) of the Revised Penal Code.

Culled from the records are the following facts:

On 31 July 2001, an Information[5] was filed before the RTC charging petitioner, Marksale Bacus (Bacus), Kevin Boniao (Boniao) and Emiliano Handoc (Handoc) with robbery, thus:

That on July 28, 2001, at about 8:00 o'clock in the morning, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, did then and there helping one another, willfully, unlawfully, and feloniously break, destroy, and destroyed the padlock of the main door of the classroom of MS. SELINA M. PANAL and once inside, the accused took, stole and carried away the following:

- One (1) Panasonic Colored TV 14 worth P6,000.00;
- One (1) Sharp Karaoke Tower Single Player color black worth P6,000.00; and
- One (1) 3D Rota Aire Stand Fan color brown worth P3,000.00;

belonging to the Ozamiz City Central School represented herein by MS. SELINA M. PANAL, all valued at P15,000.00, to the damage and prejudice of the said school thereof, in the aforementioned sum of P15,000.00, Philippine Currency.

When arraigned on separate dates with the assistance of their counsels de oficio, petitioner, Bacus, Boniao and Handoc pleaded "Not guilty" to the charge.[6] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses Nico Alforque (Nico) and Mrs. Celina M. Panal (Mrs. Panal). Their testimonies, woven together, bear the following:

On 28 July 2001 (Saturday), at about 8:00 in the morning, Nico, then eleven years old and a Grade VI student of Ozamiz City Central School (OCCS), and his cousin, Mark Alforque (Mark), went to the OCCS and cleaned the classroom of a teacher named Mrs. Myrna Pactolin (Mrs. Pactolin). They received P30.00 each from Mrs. Pactolin for the chore. Afterwards, Mark went home while Nico stayed inside the OCCS because Mrs. Pactolin requested him to get some "waya-way" and "dapna" inside the OCCS's canal to be used as fish food.[7]

While catching waya-way and dapna inside the OCCS's canal, Nico saw petitioner and Bacus enter the OCCS's premises by climbing over the OCCS's gate. Petitioner and Bacus then proceeded to the classroom of another teacher, Mrs. Panal, which was located near the OCCS's canal. Thereupon, petitioner and Bacus destroyed the padlock of the classroom's door using an iron bar and entered therein. Subsequently, petitioner and Bacus walked out of the classroom carrying a television, a karaoke and an electric fan, and thereafter brought them to the school gate. They went over the gate with the items and handed them over to Boniao and Handoc who were positioned just outside the OCCS's gate. The items were placed inside a tricycle. After petitioner, Bacus and Boniao boarded the tricycle, Handoc drove the same and they sped away.[8]

On the following day, 29 July 2001, Mrs. Panal went to the OCCS for a dance practice with her students. She proceeded to her classroom and discovered that it was forcibly opened, and that the karaoke, television and electric fan therein were missing. She immediately reported the incident to the police. The OCCS principal informed her that Nico witnessed the incident. Thereafter, petitioner, Bacus, Boniao and Handoc were charged with robbery.[9]

The prosecution also submitted object evidence to buttress the testimonies of its witnesses, to wit: (1) a T-shaped slightly curved iron bar, which is 10 mm. by 12 inches in size, used in destroying the padlock of Mrs. Panal's classroom and marked as Exhibit A; and (2) a Yeti brand, colored yellow, padlock used in Mrs. Panal's classroom, marked as Exhibit B.

For its part, the defense presented the testimonies of petitioner, Bacus, Rolly Agapay (Agapay), Boniao and Handoc to refute the foregoing accusations. Petitioner and his co-accused denied any involvement in the incident and interposed the defense of alibi.

Petitioner Estioca testified that on 28 July 2001, he cleaned his house located at Laurel Street, Ozamiz City, from 8:00 in the morning up to 10:00 in the morning. After cleaning the house, he ate lunch and rested. At around 3:00 in the afternoon of the same day, he went to the house of his neighbor/friend, Junjun Ho (Junjun), to help the latter in cleaning his houseyard. However, Junjun's father arrived, and since the father and son had to discuss important things, he decided to go home which was about past 3:00 in the afternoon. Upon arriving home, his aunt, Myrna Macamay, told him that some people had gone to the house looking for him. Later, two unidentified persons, accompanied by Boniao, came to his house and brought him to the City Hall Police Station for investigation as regards the incident.[10]

During the interrogation inside the police station, a certain Michael approached him and inquired as to where he sold the television stolen from the OCCS. He told Michael not to accuse him of stealing as it is not a good joke. Michael called Bacus and Boniao who were then standing nearby, and the two pointed to him as the one who sold the television. Afterwards, one of the police officers therein told him to approach a certain Colonel Bation who was also inside the police station. Upon approaching Colonel Bation, the latter punched him in the stomach causing him to kneel down in pain. Colonel Bation asked him where he sold the television but he told him he had nothing to do with it. Colonel Bation took a whip and smacked him with it several times on the body. An emergency hospital worker named Dennis Fuentes, who was also present, stripped him naked and burned his scrotum, chest and palm with lighter, cigarette butts and matchsticks. Thereafter, he was jailed.[11]

Bacus, a resident of Barangay Lam-an, Ozamiz City, declared that on the night of 27 July 2001, he slept at the guardhouse of the Ozamiz City National High School (OCNHS) which is located in front of the OCCS. On the following day, 28 July 2001, at about 7:00 in the morning, he woke up and helped his mother in selling bananas beside their house which is situated in front of the OCNHS. At about 11:00 in the morning of the same day, while on his way to Barangay Tinago, Ozamiz City, to buy chicken feed, a certain Michael Panal and an unidentified

companion blocked his path and asked him if he was the one who robbed the OCCS. He told the two that he had nothing to do with the incident. The two then brought him to the nearby seashore where they were met by a group of persons headed by a certain Maning. Thereupon, they tortured and beat him for refusing to admit involvement in the incident. Subsequently, he was taken to the Ozamiz City Hall for investigation.[12]

Agapay, an OCNHS working student and a resident of the said school, narrated that he knows Bacus because the latter resided in a house located just in front of the OCNHS; that he and Bacus usually slept at the guardhouse of the OCNHS; that on the night of 27 July 2001, he and Bacus slept at the guardhouse of the OCNHS; and that Bacus woke up on the following day, 28 July 2001, at about 8:30 in the morning.[13]

Boniao, 14 years old and resident of Barangay Tinago, Ozamiz City, testified that on 28 July 2001, at 8:00 in the morning, he cleaned his parents' house and thereafter watched television. On 30 July 2001, at 7:00 in the morning, he and Bacus went to the OCCS to pick up plastic bottles scattered therein. After gathering some plastic bottles, he and Bacus left the OCCS. While on their way home, a certain Leoncio apprehended him and brought him to his parents' house. Upon arriving home, his mother beat him and forbade him to go out of the house. Subsequently, several persons went to his parents' house and arrested him. He was taken to a nearby port where he was asked to identify the persons involved in the robbery of the OCCS. When he could not say anything about the incident, he was brought to the City Hall Police Station where he was jailed.[14]

Handoc, a pedicab driver residing at Barangay Tinago, Ozamiz City, stated that he helped his brother-in-law in quarrying gravel at Panay-ay Diot, Clarin, Misamis Occidental, on the whole morning of 28 July 2001; that he went back to Barangay Tinago, Ozamiz City, at about 4:00 in the afternoon of 28 July 2001; that Tomas Medina, the former barangay captain, arrested him and took him to the City Hall; that police officers in the City Hall inquired as to where he sold the television stolen from the OCCS but he replied that he had nothing to do with it; that he was repeatedly beaten by police officers for denying any involvement in the incident; and that he was detained at the City Hall Jail.[15]

After trial, the RTC rendered a Decision on 5 April 2004 convicting petitioner, Bacus, Boniao and Handoc of robbery under Article 299, subdivision (a), number (2), paragraph 4 of the Revised Penal Code. The trial court imposed on petitioner, Bacus and Handoc an indeterminate penalty ranging from six years and one day of prison mayor as minimum, to fourteen years, eight months and one day of reclusion temporal as maximum. Since Boniao was a minor (14 years old) when he participated in the heist, he was sentenced to a lower prison term of six months of arresto mayor as minimum to four years and two months of prison correccional as maximum. They were also ordered to pay P15,000.00 as civil liability. Nonetheless, the sentence meted out to Boniao was suspended and his commitment to the Department of Social Welfare and Development (DSWD) was ordered pursuant to Presidential Decree No. 603.[16] The dispositive portion of the decision reads:

WHEREFORE, finding accused Valcesar Estioca y Macamay alias "Bango," Marksale Bacus alias "Macoy," Emeliano Handoc y Bullares alias "Eming" and minor Kevin Boniao guilty beyond reasonable doubt of the crime of robbery defined and penalized under Article 299, subsection (a), paragraph 2 of the Revised Penal Code and upon applying Art. 64, paragraph 1 of the Revised Penal Code and Indeterminate Sentence Law and Privileged Mitigating Circumstance of two (2) degrees lower than that prescribed for by law (Art. 68, par. 1) unto Kevin Boniao, a minor, who was 14 years old at the time of the commission of the crime, this court hereby sentences them (a) Valcesar Estioca, Marksale Bacus, Emeliano Handoc to suffer the indeterminate penalty ranging from six (6) years and one (1) day of Prison Mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal as maximum and (b) Kevin Boniao (minor) to suffer the penalty of six (6) months of Arresto Mayor as minimum to four (4) years and two (2) months of Prison Correccional as maximum and all of the accused to suffer the accessory penalty provided for by law, to indemnify the civil liability of P15,000.00 and to pay the costs.

With respect to Kevin Boniao, the sentence imposed upon him is hereby suspended pursuant to PD 603 as amended and he is therefore committed to the Department of Social Welfare and Development (DSWD) for reformation, otherwise if he is incorrigible, then the sentence shall be imposed upon him by the court. The DSWD is hereby ordered to have close surveillance and supervision upon him and to constantly observe the development of his behavior and to submit to the court a report/recommendation on the matter as prescribed for by law.

The Order of this court dated August 20, 2001 is hereby cancelled and revoked.

The accused are entitled 4/5 of the time they were placed under preventive imprisonment.

The cash bond in the amount of P24,000 posted by accused Valcesar Estioca is hereby cancelled and the same is ordered released and returned to the bondsman concerned.[17]

Petitioner, Bacus, Boniao and Handoc filed a Motion for Reconsideration of the RTC Decision arguing that there was no conspiracy among them and that the penalty imposed was erroneous.[18] On 17 August 2004, the RTC issued an Order partially granting the motion.[19] The trial court lowered the penalty imposed on them but affirmed its earlier finding of conspiracy and conviction. It also ordered the DSWD to release and turn over Boniao to his parents. It concluded:

WHEREFORE, as herein modified, the imposable indeterminate penalty meted to accused Valcesar Estioca, Marksale Bacus and Emeliano Handoc being guilty beyond reasonable doubt of he crime of Robbery, defined and penalized under paragraph 4 of Art. 299 of the Revised Penal Code upon applying Indeterminate Sentence Law with paragraph 1 of Art. 64, Revised Penal Code, ranges from four (4) years, 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 with accessory penalty provided for by law; and for minor accused Kevin Boniao, the penalty of four (4) months of arresto mayor upon applying the privileged mitigating circumstance in Art. 68, paragraph 1 of the Revised Penal Code with Art. 64, paragraph 1 of the same Code. All of the accused shall indemnify jointly the civil liability of P15,000.00 and to pay the costs.

As aforesated, minor accuser Kevin Boniao is hereby ordered released from DSWD and returned to the custody of his parents.[20]

Unsatisfied, petitioner appealed the RTC Decision and Order before the Court of Appeals.[21] Bacus, Boniao and Handoc did not appeal their conviction anymore. On 30 June 2006, the Court of Appeals promulgated its Decision affirming with modification the RTC Decision and Order. The appellate court held that Boniao is exempt from criminal liability but his civil liability remains pursuant to Republic Act No. 9344 otherwise known as The Juvenile Justice and Welfare Act of 2006, thus:

On a final note, considering that it is axiomatic that an appeal opens the entire case for review and considering further that any decision rendered in the appeal does not bind those who did not appeal except if beneficial to them, We hold that herein accused Kevin Boniao should be acquitted and his criminal liability extinguished pursuant to Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, which took effect on May 22, 2006. The pertinent provision thereof provides, thus:

"Sec. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to Section 20 of this Act.

x x x x

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws."

WHEREFORE, premises foregoing, the appeal is hereby DISMISSED and the assailed Decision and the August 17, 2004 Order are hereby AFFIRMED subject to the modification that accused KEVIN BONIAO is hereby ACQUITTED of the crime charged pursuant to Section 6 of R.A. No. 9344, without prejudice to his civil liability.[22]

On 21 August 2006, petitioner filed the instant petition on the following grounds:

I.

WHETHER OR NOT UNDER THE FACTS AND CIRCUMSTANCES OF THE ALLEGED ROBBERY WHICH HAPPENED ON BROAD DAY LIGHT AND IN THE PRESENCE OF ALLEGED TWO (2) EYEWITNESSES UNDER HUMAN EXPERIENCE CAN POSSIBLY BE PERPETUATED BY THE ACCUSED;

II.

WHETHER OR NOT ALLEGED LONE WITNESS NICO ALFORQUE COULD HAVE POSSIBLY WITNESS[ED] THE ALLEGED ROBBERY INCIDENT.[23]

Simply put, the Court is called upon to determine whether the testimony of Nico is credible given the surrounding circumstances of the incident.

Petitioner maintains that the testimony of Nico regarding the fact that the robbery was committed in broad daylight (8:00 in the morning) and in full view of Nico is against human nature. He asserts that no person would dare commit robbery in broad daylight and in the presence of other people because they would be easily identified.[24]

Petitioner further claims that it was impossible for Nico to see petitioner and Bacus destroy the door of Mrs. Panal's classroom because, according to Nico's own Affidavit, Nico was inside the classroom of Mrs. Pactolin during the incident. He insists that the walls of Mrs. Pactolin's classroom prevented Nico from witnessing the incident.[25]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[26]

After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we find no cogent reason to overturn the factual finding of the RTC that Nico's testimony is credible. As an eyewitness to the incident, Nico positively identified petitioner, Bacus, Boniao and Handoc as those who robbed the OCCS of an electric fan, television and karaoke on the morning of 28 July 2001. His direct account of how petitioner, Bacus, Boniao and Handoc helped one another in robbing the OCCS is candid and convincing, thus:

Q:

Now, on July 28, 2001 at about 8:00 o'clock in the morning, could you be kind enough to tell us where were you at that time?

A:

We were cleaning the room of the school, sir.

Q:

What particular school are you referring to?

A:

At Ozamis Central School, sir.

Q:

Would you be able to tell us the name of the teacher of that particular classroom you were cleaning?

A: The classroom of Mrs. Pactolin, sir.

Q: Why did you clean the classroom of Mrs. Pactolin, were you being paid?

A: Yes sir.

Q: How much?

A: P30.00 sir.

Q: Were you alone in cleaning the classroom of Mts. Pactolin at that time?

A: We were two sir.

Q: Would you be kind enough to tell this honorable court who was your companion at that time?

A: My cousin Mark Alforque sir.

Q: Now, after cleaning the classroom of Mrs. Pactolin together with Mark Alforque, what did you do next?

A: My cousin went home and I was left in the classroom because I was requested by my teacher to get fish food.

Q: What fish food are you talking about Mr. Witness?

A: Wayawayaya and Dapna sir.

Q: While getting the fishfood for your teacher, did you observed (sic) anything unusual that happened?

A: Yes, sir.

Q: Would you be kind enough to tell this Court now what did you observed (sic) that time when you were getting the fishfood?

A: I saw somebody climbed the gate sir.

x x x x

Q: Where were you at that time Mr. Nico Alforque?

A: I was inside the school sir.

Q: What particular place are you referring?

A: Near the canal sir.

Q: And would you be able to tell us also how far were you when you saw these persons climbing the gate?

A: I was a little bit farther sir.

Q: After you saw the two persons climbing the gate, what happened after that?

A: I saw that the padlock was opened.

Q: What particular padlock are you referring to?

A: I saw a padlock made of iron.

Q: And what particular classroom or place were these persons you saw that they were opening the padlock?

A: The classroom of Mrs. Celina Panal sir.

Q: Who is this Mrs. Celina Panal?

A: A teacher sir.

Q: Would you be able to tell us whose classroom these persons you saw opening the padlock?

A: The classroom of Mrs. Panal sir.

Q: Would you be able to tell us how did they opened (sic) the classroom of Mrs. Celina Panal?

A: The room was opened with the used (sic) of an iron bar sir.

Q: I am showing to you this iron bar, what relation has this iron bar to the one you said a while ago?

A: That is the one used by the persons to open the classroom sir.

TO COURT:

We would like to request your honor that this iron bar be marked as our Exh. "A."

COURT:

Mark it.

TO WITNESS:

Q: And what about the padlock, would you be able to identify the padlock that was used (sic) by these persons?

A: Yes sir.

Q: I am showing to you this padlock, would you kindly tell this Court what relation this padlock to the one you stated a while ago?

A: That is the padlock used (sic) by them sir.

TO COURT:

For identification purposes your honor, May I respectfully request that this padlock be marked as Exh. "B."

COURT:

Mark it.

TO WITNESS:

Q:

Now Mr. Nico Alforque, you said that there were two persons who opened the classroom of Mrs. Celina Panal, would you kindly identify these persons if you can see them now in court?

A: Yes sir.

Q: Would you kindly point to them if they are now here in court?

The witness is pointing to a person whom when asked of his name declared that he is Valcesar Estioca.

A: And would you kindly tell us also the companion of Valcesar Estioca?

The witness is pointing to a person whose name is Marksale Bacus.

Q: These are the persons who destroyed the padlock of the classroom of Mrs. Celina Panal?

A: Yes sir.

Q: After destroying the padlock Mr. Nico Alforque, what did you observed?

A: I saw that they brought out the colored TV, the Karaoke and the Electric Fan.

Q: You said that these persons after destroying the padlock, took the colored TV, the Karaoke and the Electric Fan, where did they go?

A: After taking these things, they went out of the classroom sir.

Q: And after going out of the classroom where did they go?

A: They went to the gate sir.

Q: And at the gate, what did you observed (sic) if any?

A: I saw that there was another person sir.

Q: And what was this person doing at the gate?

A: They passed on the things through the person at the gate sir.

Q: To whom did these persons passed these things at the gate?

The witness is pointing to a man whose name is Kevin Boniao.

Q: What else did you observed (sic) at the gate?

A: I saw that there is another person.

Q: Who was that person?

The witness is pointing to accused Emeliano Handoc.

Q: And what was Emeliano Handoc doing at the gate Mr. Nico Alforque?

A: He was waiting at the gate sir.

Q: Now after you saw these persons, what were the two accused doing at the gate when they passed the things to Kevin Boniao?

A: They were riding the tricycle sir.

Q: Could you be able to tell us who was driving the tricycle?

The witness is pointing to Emeliano Handoc.

Q: And after seeing these persons what did you observed (sic) after that?

A: I did not see anything because I went away sir.

Q: You mean to say that all those persons went away when you went away?

A: Yes sir.

Q: They went together, is that what you mean?

A: Yes sir.

Q: Are they walking or riding?

A: They were riding in a tricycle sir.

COURT:

Q: Whose tricycle?

The witness is pointing to Emeliano Handoc.[27]

Mrs. Panal corroborated the foregoing testimony of Nico on relevant points. [28]

The foregoing testimonies are consistent with the object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Nico and Mrs. Panal to be truthful and unequivocal and, as such, prevailed over the denial and alibi of petitioner and his cohorts. Both courts also found no ill motive on the part of Nico and Mrs. Panal.

It is not incredible or against human nature for petitioner and his companions to have committed the robbery in broad daylight and in full view of Nico. There is no standard behavior of criminals before, during and after the commission of a crime.[29] Some may be so bold and daring in committing a crime in broad daylight and in full view of other persons. Others may be so cunning such that they commit crime in the darkness of the night to avoid detection and arrest by peace officers.[30]

In *People v. Toledo, Sr.*,[31] we sustained the credibility of the eyewitness and upheld the conviction of the accused for homicide despite the circumstances existing at the crime scene -- broad daylight, full view of many persons inside the school compound, and presence of inhabited houses. It was also ruled that crimes may be committed in broad daylight and that criminals are not expected to be logical or to act normally in executing their felonious designs because committing a crime itself is not logical or reasonable, viz :

Appellant [accused] also asserts that the testimony of Ronnie [eyewitness] was inherently improbable. He insists that the circumstances existing at the crime scene -- broad daylight, full view of many persons inside the school compound, presence of inhabited houses around the purok -- were such that a crime could not be committed.

For a number of reasons, we find no merit in this contention. First, appellant's premise that there were many persons in the school compound is not supported by the evidence on record. Second, crimes are known to have been committed in broad daylight within the vicinity of inhabited houses. Third, although it would be illogical and unreasonable for normal persons in full control of their faculties to commit a crime under such circumstances, the same does not hold true for all, especially those under the grip of criminal impulses. We cannot expect the mind of such persons to work within the parameters of what is normal, logical or reasonable, as the commission of a crime is not normal, logical or reasonable. Hence, the circumstances present in this case do not rule out appellant's commission of the crime.[32]

Besides, as aptly observed by the Office of the Solicitor General,[33] it is not improbable for petitioner and his cohorts to have committed the robbery as narrated by Nico because it happened on a Saturday, a non-school day in the OCCS. Apparently, petitioner and his companions expected that none or only few persons would go to the OCCS on said date.

A perusal of the transcript of stenographic notes shows that Nico was in a canal located inside the OCCS catching waya-way and dapna when he saw the incident, and was not inside the enclosed classroom of Mrs. Pactolin as alleged by petitioner.[34] Nico declared that he clearly saw the incident and that nothing blocked his vision.[35] Nico remained steadfast and consistent in his foregoing testimony even on cross examination, thus:

Q:

From the place where you were gathering fishfood at that time you cannot clearly see the room of Mrs. Panal, am I right?

A:

I can see it clearly sir.

Q:

You have not seen what were those persons doing inside the room of Mrs. Panal?

A:

I saw them sir.

Q:

You saw them taking away the Colored TV, Karaoke and the Electric Fan?

A:

Yes sir.

Q:

Who among them took with him the TV?

The witness is pointing to Valcesar Estioca.

Q:

Aside from the TV he also carry away with him the Electric Fan and Karaoke?

A:

It was his companion sir.

x x x x

Q:

Now at the gate you saw how many persons aside from that two who entered the room of Mrs. Panal?

A:

I saw three persons sir.

Q:

Was these three persons outside the gate or inside the gate?

A:

They were inside the gate sir.

Q:

And that was the time you saw the TV, Karaoke and Electric Fan turned over to those persons at the gate?

A:

Yes sir.

Q:

After that, those three persons left the place?

A:

Yes sir.

Q:

What about those two persons you saw entering the room of Mrs. Panal where did they go?

A:

They went out sir.[36]

The alleged inconsistency between the affidavit of Nico and his court testimony is inconsequential. Inconsistencies between the sworn statement or affidavit and direct testimony given in open court do not necessarily discredit the witness since an affidavit, being taken ex parte, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, usually being incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement; hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.[37]

Since we find no error in the factual finding of the RTC, as affirmed by the Court of Appeals, that the testimony of eyewitness Nico is credible, then the judgment of conviction against petitioner, Bacus, Boniao, and Handoc should be affirmed. The positive and credible testimony of a lone eyewitness, such as Nico, is sufficient to support a conviction.[38]

We shall now determine the propriety of the penalties imposed on petitioner, Bacus, Boniao and Handoc.

Article 299, subdivision (a), number (2), paragraph 4 of the Revised Penal Code provides that the penalty for robbery with use of force upon things where the value of the property taken exceeds P250.00 and the offender does not carry arms, as in this case, is prision mayor. Since no aggravating or mitigating circumstance was alleged and proven in this case, the penalty becomes prision mayor in its medium period in accordance with Article 64, paragraph 1 of the Revised Penal Code. Applying the Indeterminate Sentence Law, the range of the penalty now is prision correccional in any of its periods as minimum to prision mayor medium as its maximum. Thus, the RTC and the Court of Appeals were correct in imposing on petitioner, Bacus and Handoc, a prison term of four years, two months, and one day of prision correccional as minimum, to eight years and one day of prision mayor as maximum, because it is within the aforesaid range of penalty.

With regard to Boniao, who was a minor (14 years old) at the time he committed the robbery, Article 68, paragraph 1 of the Revised Penal Code instructs that the penalty imposable on him, which is prision mayor, shall be lowered by two degrees. The RTC, therefore, acted accordingly in sentencing him to four months of arresto mayor.

Nonetheless, as correctly ruled by the Court of Appeals, Boniao, who was barely 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344, otherwise known as The Juvenile Justice and Welfare Act of 2006, to wit:

SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

x x x x

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Sec. 20. Children Below the Age of Criminal Responsibility. - If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

Although the crime was committed on 28 July 2001 and Republic Act No. 9344 took effect only on 20 May 2006, the said law should be given retroactive effect in favor of Boniao who was not shown to be a habitual criminal.[39] This is based on Article 22 of the Revised Penal Code which provides:

Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

However, as Boniao's civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344, Boniao should be held jointly liable with petitioner, Bacus, and Handoc for the payment of civil liability in the amount of P15,000.00 representing the stolen items.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED. The Decision of the Court of Appeals dated 30 June 2006 in CA-G.R. CR No. 00036 is AFFIRMED in toto. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes., JJ., concur.

[1] Rollo, pp. 27-37.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring; rollo, pp. 10-23.

[3] Rollo , pp. 58-63.

[4] Id. at 64-66.

[5] Records, pp. 1-2.

[6] Id. at 32, 33, 40, 41, 49 & 50.

[7] TSN, 8 February 2002, pp. 2-3.

[8] Id. at 3-6.

[9] Id. at 12-14.

[10] TSN, 13 February 2002, pp. 3-11.

[11] Id. at 11-18.

[12] TSN, 28 February 2002, pp. 3-11.

[13] TSN, 13 February 2002, pp. 20-24.

[14] TSN, 28 February 2002, pp. 19-24.

[15] TSN, 8 May 2003, pp. 2-8.

[16] Article 192 thereof; otherwise known as "The Child and Youth Welfare Code" approved on 10 December 1974.

[17] Rollo, pp. 62-63.

- [18] Records, pp. 168-170.
- [19] Id. at 174-176.
- [20] Rollo, p. 66.
- [21] CA rollo, pp. 11-17.
- [22] Rollo, pp. 22-23.
- [23] Records, pp. 31-32.
- [24] Id. at 31-32.
- [25] Id. at 32-34.
- [26] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.
- [27] TSN, 8 February 2002, pp. 2-6.
- [28] Id.
- [29] *People v. Garcia*, 447 Phil. 244, 260 (2003); *People v. Cortezano*, 425 Phil. 696, 708 (2002).
- [30] Id.
- [31] 409 Phil. 746 (2001).
- [32] Id. at 757.
- [33] Solicitor-General Antonio Eduardo B. Nachura (now a member of this Court) signed the Comment for respondent. (Rollo, pp. 88-89.)
- [34] TSN, 8 February 2002, pp. 3-4.
- [35] Id. at 9-11.
- [36] TSN, 8 February 2002, pp. 9-11.
- [37] *People v. Astudillo*, 449 Phil. 778, 791 (2003).
- [38] *Ocampo v. People*, G.R. No. 163705, 30 July 2007, 528 SCRA 547, 557-558.
- [39] *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 718; *Santos v. People*, 443 Phil. 618, 635 (2003).

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