PEDRO C. CONSULTA, APPELLANT, VS. PEOPLE OF THE PHILIPPINES, APPELLEE,

G.R. No. 179462. February 12, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Court of Appeals having, by Decision of April 23, 2007,[1] affirmed the December 9, 2004 Decision of the Regional Trial Court of Makati City, Branch 139 convicting Pedro C. Consulta (appellant) of Robbery with Intimidation of Persons, appellant filed the present petition.

The accusatory portion of the Information against appellant reads:

> That on or about the 7[th] day of June, 1999, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away complainant's NELIA R. SILVESTRE gold necklace worth P3,500.00, belonging to said complainant, to the damage and prejudice of the owner thereof in the aforementioned amount of P3,500.00.
>
> CONTRARY TO LAW.[2] (Emphasis in the original, underscoring supplied)

From the evidence for the prosecution, the following version is gathered:

At about 2:00 o'clock in the afternoon of June 7, 1999, private complainant Nelia R. Silvestre (Nelia), together with Maria Viovicente (Maria) and Veronica Amar (Veronica), boarded a tricycle on their way to Pembo, Makati City. Upon reaching Ambel Street, appellant and his brother Edwin Consulta (Edwin) blocked the tricycle and under their threats, the driver alighted and left. Appellant and Edwin at once shouted invectives at Nelia, saying "Putang ina mong matanda ka, walanghiya ka, kapal ng mukha mo, papatayin ka namin." Appellant added "Putang ina kang matanda ka, wala kang kadala dala, sinabihan na kita na kahit saan kita matiempuhan, papatayin kita."

Appellant thereafter grabbed Nelia's 18K gold necklace with a crucifix pendant which, according to an "alajera" in the province, was of 18k gold, and which was worth P3,500, kicked the tricycle and left saying "Putang ina kang matanda ka! Kayo mga nurses lang, anong ipinagmamalaki niyo, mga nurses lang kayo. Kami, marami kaming mga abogado. Hindi niyo kami maipapakulong kahit kailan!"

Nelia and her companions immediately went to the Pembo barangay hall where they were advised to undergo medical examination. They, however, repaired to the Police Station, Precinct 8 in Comembo, Makati City and reported the incident. They then proceeded to Camp Crame where they were advised to return in a few days when any injuries they suffered were expected to manifest.

Nine days after the incident or on June 16, 1999, Nelia submitted a medico-legal report and gave her statement before a police investigator.

Denying the charge, appellant branded it as fabricated to spite him and his family in light of the following antecedent facts:

He and his family used to rent the ground floor of Nelia's house in Pateros. Nelia is his godmother. The adjacent house was occupied by Nelia's parents with whom she often quarreled as to whom the rental payments should be remitted. Because of the perception of the parents of Nelia that his family was partial towards her, her parents disliked his family. Nelia's father even filed a case for maltreatment against him which was dismissed and, on learning of the maltreatment charge, Nelia ordered him and his family to move out of their house and filed a case against him for grave threats and another for light threats which were dismissed or in which he was acquitted.

Appellant went on to claim that despite frequent transfers of residence to avoid Nelia, she would track his whereabouts and cause scandal.

Appellant's witness Darius Pacaña testified that on the date of the alleged robbery, Nelia, together with her two companions, approached him while he was at Ambel Street in the company of Michael Fontanilla and Jimmy Sembrano, and asked him (Pacaña) if he knew a bald man who is big/stout with a big tummy and with a sister named Maria. As he replied in the affirmative, Nelia at once asked him to accompany them to appellant's house, to which he acceded. As soon as the group reached appellant's house, appellant, on his (Pacaña's) call, emerged and on seeing the group, told them to go away so as not to cause trouble. Retorting, Nelia uttered "Mga hayop kayo, hindi ko kayo titigilan."

Another defense witness, Thelma Vuesa, corroborated Pacaña's account.

The trial court, holding that intent to gain on appellant's part "is presumed from the unlawful taking" of the necklace, and brushing aside appellant's denial and claim of harassment, convicted appellant of Robbery, disposing as follows:

> WHEREFORE, premises considered, this Court finds accused PEDRO C. CONSULTA guilty beyond reasonable doubt, as principal of the felony of Robbery with Intimidation of Persons defined and penalized under Article 294, paragraph No. 5, in relation to Article 293 of the Revised Penal Code and hereby sentences him to suffer the penalty of imprisonment from one (1) year, seven (7) months and eleven (11) days of arresto mayor, as minimum, to eight (8) years, eight (8) months and one (1) day of prision mayor, as maximum, applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances which attended the commission of the said crime.
>
> The said accused is further ordered to pay unto the complainant Nelia Silvestre the amount of P3,500.00 representing the value of her necklace taken by him and to pay the costs of this suit.
>
> SO ORDERED. (Italics in the original, underscoring supplied)

The appellate court affirmed appellant's conviction with modification on the penalty.

In his present appeal, appellant raises the following issues:

> (1) Whether or not appellant was validly arraigned;
>
> (2)
>
> Whether or not appellant was denied due process having been represented by a fake lawyer during arraignment, pre-trial and presentation of principal witnesses for the prosecution;
>
> (3) Whether or not appellant has committed the crime of which he was charged; and
>
> (4)

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> Whether or not the prosecution was able to prove the guilt of the appellant beyond reasonable doubt. (Underscoring supplied)

The first two issues, which appellant raised before the appellate court only when he filed his Motion for Reconsideration of said court's decision, were resolved in the negative in this wise:

> On the matter of accused-appellant's claim of having been denied due process, an examination of the records shows that while accused-appellant was represented by Atty. Jocelyn P. Reyes, who "seems not a lawyer," during the early stages of trial, the latter withdrew her appearance with the conformity of the former as early as July 28, 2000 and subsequently, approved by the RTC in its Order dated August 4, 2000. Thereafter, accused-appellant was represented by Atty. Rainald C. Paggao from the Public Defender's (Attorney's) Office of Makati City. Since the accused-appellant was already represented by a member of the Philippine Bar who principally handled his defense, albeit unsuccessfully, then he cannot now be heard to complain about having been denied of due process.[3] (Underscoring supplied)

That appellant's first counsel may not have been a member of the bar does not dent the proven fact that appellant prevented Nelia and company from proceeding to their destination. Further, appellant was afforded competent representation by the Public Attorneys' Office during the presentation by the prosecution of the medico-legal officer and during the presentation of his evidence. People v. Elesterio[4] enlightens:

> "As for the circumstance that the defense counsel turned out later to be a non-lawyer, it is observed that he was chosen by the accused himself and that his representation does not change the fact that Elesterio was undeniably carrying an unlicensed firearm when he was arrested. At any rate, he has since been represented by a member of the Philippine bar, who prepared the petition for habeas corpus and the appellant's brief." (Underscoring supplied)

On the third and fourth issues. Article 293 of the Revised Penal Code under which appellant was charged provides:

> 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 guilt of robbery. (Italics in the original, underscoring supplied)

Article 294, paragraph 5, under which appellant was penalized provides:

> 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 x
>
> - The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases. x x x (Citations omitted; italics in the original; underscoring supplied)

The elements of robbery are thus: 1) there is a taking of personal property; 2) the personal property belongs to another; 3) the taking is with animus lucrandi; and 4) the taking is with violence against or intimidation of persons or with force upon things.

Animus lucrandi or intent to gain is an internal act which can be established through the overt acts of the offender. It may be presumed from the furtive taking of useful property pertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator.[5]

The Court finds that under the above-mentioned circumstances surrounding the incidental encounter of the parties, the taking of Nelia's necklace does not indicate presence of intent to gain on appellant's part. That intent to gain on appellant's part is difficult to appreciate gains light given his undenied claim that his relationship with

Nelia is rife with ill-feelings, manifested by, among other things, the filing of complaints[6] against him by Nelia and her family which were subsequently dismissed or ended in his acquittal.[7]

Absent intent to gain on the part of appellant, robbery does not lie against him. He is not necessarily scot-free, however.

From the pre-existing sour relations between Nelia and her family on one hand, and appellant and family on the other, and under the circumstances related above attendant to the incidental encounter of the parties, appellant's taking of Nelia's necklace could not have been animated with animus lucrandi. Appellant is, however, just the same, criminally liable.

For "[w]hen there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved."[8]

> SEC. 5. When an offense includes or is included in another. - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.[9] (Italics in the original, underscoring supplied)

Grave coercion, like robbery, has violence for one of its elements. Thus Article 286 of the Revised Penal Code provides:

> "Art. 286. Grave coercions. - The penalty of prision correccional and a fine not exceeding six thousand pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law or compel him to do something against his will, whether it be right or wrong.
>
> If the coercion be committed in violation of the exercise of the right of suffrage or for the purpose of compelling another to perform any religious act or to prevent him from exercising such right or from doing such act, the penalty next higher in degree shall be imposed." (Italics in the original; underscoring supplied)

The difference in robbery and grave coercion lies in the intent in the commission of the act. The motives of the accused are the prime criterion:

> "The distinction between the two lines of decisions, the one holding to robbery and the other to coercion, is deemed to be the intention of the accused. Was the purpose with intent to gain to take the property of another by use of force or intimidation? Then, conviction for robbery. Was the purpose, without authority of law but still believing himself the owner or the creditor, to compel another to do something against his will and to seize property? Then, conviction for coercion under Article 497 of the Penal Code. The motives of the accused are the prime criterion. And there was no common robber in the present case, but a man who had fought bitterly for title to his ancestral estate, taking the law into his own hands and attempting to collect what he thought was due him. Animus furandi was lacking."[10] (Italics in the original; citations omitted; underscoring supplied)

The Court finds that by appellant's employment of threats, intimidation and violence consisting of, inter alia, uttering of invectives, driving away of the tricycle driver, and kicking of the tricycle, Nelia was prevented from proceeding to her destination.

Appellant is thus guilty of grave coercion which carries the penalty of prision correccional and a fine not exceeding P6,000. There being no aggravating or mitigating circumstance, the penalty shall be imposed in its medium term. Applying the Indeterminate Sentence Law, the minimum that may be imposed is anywhere from

one (1) month and one (1) day to six (6) months of arresto mayor, as minimum, and from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional, as maximum.

WHEREFORE, the Court SETS ASIDE the challenged Court of Appeals Decision and another is rendered finding appellant, Pedro C. Consulta, GUILTY beyond reasonable doubt of Grave Coercion and sentences him to suffer the indeterminate penalty of from six (6) months of arresto mayor as minimum, to three (3) years and six (6) months of prision correccional medium as maximum.

Appellant is further ordered to return the necklace, failing which he is ordered to pay its value, Three Thousand Five Hundred (P3,500) Pesos.

Costs de oficio.

SO ORDERED.

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

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Marina L. Buzon and Lucas P. Bersamin; CA rollo, pp. 166-176.

[2] Records, p. 1.

[3] Rollo, p. 169

[4] G.R. No. 63971, May 9, 1989, 173 SCRA 243, 249.

[5] People v. Reyes, G.R. 135682, March 26, 2003, 399 SCRA 528

[6] Exhibit "2" - Information for Maltreatment, Exhibit "4" - Light Threats, Exhibit "5" - Grave Threats.

[7] Vide Exhibit "3" - Order granting Supplemental Motion to Quash (Malicious Mischief), folder 1, records, pp. 202-203, Exhibit "4" - Order dismissing the information for Light Threats.

[8] Rules of Court, Rule 120, Section 4.

[9] Id. at Section 5

[10] United States v. Villa Abrille, 36 Phil. 807, 809 (1917).

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